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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 901

**BAKERY AND PASTRY DRIVERS AND HELPERS
LOCAL 802 OF THE INTERNATIONAL BROTHER-
HOOD OF TEAMSTERS, ET AL., PETITIONERS,**

vs.

HYMAN WOHL AND LOUIS PLATZMAN

**ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE
OF NEW YORK**

PETITION FOR CERTIORARI LED MARCH 28, 1941.

CERTIORARI GRANTED JUNE 2, 1941.

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Court of Appeals

OF THE STATE OF NEW YORK.

HYMAN WOHL and LOUIS PLATZMAN,
Plaintiffs-Respondents,
against

BAKERY AND PASTRY DRIVERS AND HELPERS LOCAL 802 of the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, PETER SULLIVAN, individually and as President of the said Union, PADDY SULLIVAN, individually and as an officer of the said Union, and HYMAN BERNSTEIN, individually and as business agent of said Union, all of 265 West 14th Street, New York City,

Defendants-Appellants.

Statement Under Rule 234.

This action was commenced by service of summons and verified complaint on the 22nd day of December, 1939, upon Bakery and Pastry Drivers and Helpers, Local 802 of the International Brotherhood of Teamsters, Peter Sullivan, individually and as President of the said Union, Paddy Sullivan, individually and as an officer of the said Union, and on December 24th, 1939, upon Hyman Bernstein, individually and as business agent of said Union.

The defendants served their answer on or about January 27th, 1939.

Statement Under Rule 234.

Issue was joined by the service of a reply on or about the 1st day of February, 1939.

On the 17th day of January, an order was entered denying the defendants' motion to dismiss the complaint.

The action was tried before Hon. Thomas F. Noonan, one of the Justices of the Supreme Court, sitting at a Special Term in the County of Bronx, City and State of New York, on the 22nd and 23rd days of March, 1939, without a jury.

On July 6, 1939, Mr. Justice Noonan filed an opinion in favor of the plaintiffs and against the defendants, which same was published in the New York Law Journal of Friday, July 7, 1939, providing for the submission of findings, conclusions and proposed judgment on notice.

The findings and conclusions were submitted and entered in the office of the Clerk of the County of Bronx on August 25, 1939. The judgment was made and entered in the office of the Clerk of the County of Bronx on November 1, 1939.

The defendants, Bakery and Pastry Drivers and Helpers Local 802 of the International Brotherhood of Teamsters, appealed from the judgment as entered on November 1, 1939. The plaintiffs appear by Joseph Apfel, Esq., of 123 William Street, New York City, and the defendants appear by Rice & Maguire, Esqs., of 122 East 42nd Street, New York City. The names of the original parties are stated in full above, and there has been no change of parties or attorneys since the commencement of this action.

Notice of Appeal to Appellate Division.

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**SUPREME COURT
OF THE STATE OF NEW YORK,**

BRONX COUNTY.

HYMAN WOHL and LOUIS PLATZMAN,
Plaintiffs,

against

BAKERY AND PASTRY DRIVERS AND HELPERS LOCAL 802 of the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, PETER SULLIVAN, individually and as President of the said Union, PADDY SULLIVAN, individually and as an officer of the said Union, and HYMAN BERNSTEIN, individually and as business agent of said Union, all of 265 West 14th Street, New York City,

Defendants.

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Sir:

PLEASE TAKE NOTICE, that the defendants herein hereby appeal to the Appellate Division of the Supreme Court, First Department, from the judgment herein of the Court, entered in the office of the Clerk of Bronx County on the 1st day of November, 1939, and from the decision on which same is based, and from each and every part of said decision and judgment; and take

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FURTHER NOTICE, that upon the said appeal, the findings and conclusions proposed in behalf of the

10

Notice of Appeal to Appellate Division.

defendants herein and refused or disallowed by the said Court will be brought up for review.

Dated, New York, N. Y., November 19th, 1939.

RICE & MAGUIRE,
Attorneys for Defendants,
Office & Post Office Address,
122 East 42nd St.,
Borough of Manhattan,
City of New York.

To:

11

JOSEPH APFEL, Esq.,
Attorney for Plaintiffs,
123 William Street,
New York City.

To:

CLERK OF BRONX COUNTY.

12

Summons.

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SUPREME COURT
OF THE STATE OF NEW YORK,
COUNTY OF BRONX.

HYMAN WOHL and LOUIS PLATZMAN,
Plaintiffs,
against

BAKERY AND PASTRY DRIVERS AND HELP-
ERS LOCAL 802 of the INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, PETER SUL-
LIVAN, individually and as President of
the said Union, PADDY SULLIVAN, indi-
vidually and as an officer of the said
Union, and HYMAN BERNSTEIN, individu-
ally and as business agent of said Union,
Defendants.

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To the above named Defendants:

YOU ARE HEREBY SUMMONED to answer the com-
plaint in this action, and to serve a copy of your
answer, or, if the complaint is not served with this
summons, to serve a notice of appearance, on the
Plaintiffs' Attorney within twenty days after the
service of this summons, exclusive of the day of
service. In case of your failure to appear or an-
swer, judgment will be taken against you by de-
fault for the relief demanded in the complaint.

15

Dated: December 14th, 1938.

JOSEPH APFEL,
Attorney for Plaintiffs,
Office & P. O. Address,
123 William Street,
Manhattan, New York.

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Complaint.

**SUPREME COURT
OF THE STATE OF NEW YORK,
COUNTY OF BRONX.**

[SAME TITLE.]

The plaintiffs, by their attorney, Joseph Apfel, complaining of the defendants, respectfully allege as follows:

1. Upon information and belief the defendant, Bakery and Pastry Drivers and Helpers Loc. 802 of the International Brotherhood of Teamsters, was
17 and still is a voluntary unincorporated association.

2. Upon information and belief, the defendants, Peter Sullivan, Paddy Sullivan and Hyman Bernstein, were and still are officers and business agents of the said defendant union, and at all times hereinafter mentioned, acted and still act as representatives of the said defendant union and within the scope of the powers and authorization.

3. The plaintiffs were and still are Jobbers. They purchase bread and rolls from various bakeries and resell them to individuals, groceries and to other bakeries who do not manufacture their own products.
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4. That the plaintiffs use a truck which is their property, to carry on the business.

5. That the plaintiffs do not employ any servants or employees in their business, but they personally transact all business as their business depends solely on their own individual and personal contact and attention.

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Complaint.

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6. That the plaintiffs are not salaried employees, but their income and earnings depends solely on the profit that they make when they resell the merchandise; that the average weekly gross income of the plaintiffs is the sum of \$32.00 during the busy months and about \$20 per week in the summer months.

7. That the plaintiffs are married and each one of them has a family to support besides the cost of the upkeep of the truck.

8. That on or about the 6th day of December, 1938, the defendant, Hyman Bernstein, demanded of the plaintiffs that they, each of them, employ one man on their respective trucks, one day each week and pay him the union wages of \$9 per day, and in the event that they refuse to comply with this demand, that the defendants and their servants, employees and each member of the defendant union will picket the bakeries from which they purchase the bread and rolls and also picket the various places of business of the individuals who buy the merchandise from them; that the defendants will also prevent the plaintiffs, by force if necessary, from operating their trucks until the demand has been complied with.

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9. That an arrangement was made for the 9th day of December, 1938, for a meeting between the parties hereto, but that the defendants failed and refused to keep the said appointment; that the defendants refused to listen to the plaintiffs, but told them that they will have to employ help even though the plaintiffs and their families will starve.

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Complaint.

10. That the plaintiffs have requested the National Labor Board to intervene, but the said Board contends that it has no jurisdiction as no labor dispute is involved between employer and employee.

11. That if the plaintiffs are required to comply with the defendants' demand, their earning power will be diminished and they will be forced to give up this business and depend upon relief for their and their families' sustenance.

23

12. That irreparable damages will be caused unless the relief demanded is granted; that the plaintiffs have no remedy at law.

WHEREFORE the plaintiffs demand judgment against the defendants as follows:

1. That a temporary and a permanent injunction be issued enjoining the defendants, the members of the defendant union, their servants, agents and employees, and all other persons acting in conjunction with them from engaging in any and all unlawful acts and from interfering in any way with the plaintiffs' business or with anyone else connected with the plaintiffs' business.

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2. That the plaintiffs have such other, further and different relief or judgment in the premises as may be just and proper, together with the costs and disbursements of the action.

JOSEPH APFEL,
Attorney for Plaintiffs,
Office & P. O. Address,
123 William Street,
Manhattan, New York.

(Verified December 17th, 1938.)

Answer.

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SUPREME COURT
OF THE STATE OF NEW YORK,
COUNTY OF BRONX.

[SAME TITLE.]

Defendants herein answering the complaint, by their attorneys Rice & Maguire:

FIRST: Deny each and every the allegations contained in Paragraph 2 thereof, excepting that the defendants admit that Peter Sullivan was and is President of Local 802, that Paddy Sullivan was and is Secretary-Treasurer thereof, and that Hyman Bernstein was and is a business agent thereof.

26

SECOND: Deny each and every the allegations contained in Paragraph 3, excepting that the defendants admit that the plaintiffs hold themselves out to be "jobbers," that they acquire baked products from a bakery, and that they deliver them to various individuals, groceries, and other stores.

THIRD: Deny any knowledge or information sufficient to form a belief as to each and every the allegations contained in Paragraphs 4, 6, 7 and 10.

FOURTH: Upon information and belief, deny each and every the allegations contained in Paragraphs 5 and 11.

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FIFTH: Deny each and every the allegations contained in Paragraphs 8, 9 and 12, excepting the defendants admit that defendant, Hyman Bernstein, requested each of the plaintiffs who presently work seven days each week, to engage a relief man for one day in each week.

FOR A FIRST, SEPARATE AND COMPLETE DEFENSE,
THE DEFENDANTS ALLEGE:

SIXTH: That Bakery and Pastry Drivers and Helpers, Local 802, at all times hereinafter mentioned, was and is an unincorporated association, a labor union, and that Peter Sullivan is the President, Paddy Sullivan, the Secretary-Treasurer, and Hyman Bernstein, a business agent thereof.

SEVENTH: That said Union is chartered by the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, an unincorporated association, and is affiliated with the American Federation of Labor, the Central Trades and Labor Council of Greater New York, the New York State Federation of Labor, and various other central labor bodies.

EIGHTH: That the membership of Local 802 is comprised largely of bakery drivers and helpers, and that amongst the purposes of said Union is to secure and maintain a desirable wage scale, hours of employment and working conditions for its members; to maintain that which has been attained by this Union and its predecessor Union in the way of benefits to those employed in this craft; to collectively bargain with employers, to extend the Union's wage scale, hours, and other conditions to all engaged in the craft; both as a matter of preserving and maintaining that which has been attained by and through the Union, and as a matter of relieving the poverty and suffering which results from failure to pay and allow reasonable and fair wages, hours and conditions; to insure to workingmen engaged in the craft both in their interest and in the interest of the general public and general

welfare, the carrying of and complying with of compensation insurance, compliance with Social Security, and Unemployment Insurance Laws, and to otherwise and generally carry on, advocate and forward the legitimate and proper aspirations of a labor union, and the enforcement of laws of the State and Nation.

NINTH: That heretofore and generally the distribution of baked products in the City of New York was carried on by the bakeries employing men to operate vehicles owned by the bakeries, and from which delivery was made to residences, stores and other purchasers of the baked products. That it was such type of employees who were and are members of this Union and its predecessor Union and over many years of long and arduous struggle, largely through collective bargaining, but at times by strikes, certain wage scales, hours and working conditions were attained, the conditions including a day of rest in each seven and other benefits.

32

TENTH: That of comparative recent origin, has been the practice of certain employers, in an effort, and as part of their program, to break down the organization of bakery drivers and helpers, to destroy this Union, and to tear down the wage, hour and working condition structure built up, and further to defeat the purposes of, to nullify and to evade, the laws of this State and Nation requiring the day of rest in seven, the carrying of compensation insurance, or social security, and of unemployment insurance, and otherwise. They have discharged their drivers and helpers and sought to bring about distribution of their baked products through the use of so-called "jobbers," who, said

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employers maintain, are independent contractors, but who in most instances are employees, the employment relationship being so beclouded and veiled as to enable the employers to evade responsibilities imposed by law and required by the Union for the legitimate and proper carrying out of its purposes.

35 ELEVENTH: That the establishment of such "jobbers" and the continuance thereof is a direct attack upon Union wage, hour and working conditions, it will inevitably destroy the same as well as the Union, and further will nullify all of the salutary laws which have been enacted in this State for the benefit of workingmen and the public generally.

TWELFTH: That the plaintiffs herein, and by their continuance in their present methods and course of business, are breaking down the Union wage scale, hour and working conditions, and are tending to destroy this Union. They have nullified and continue to so do, the beneficial laws enacted in this state and in the nation, and further, having sought to remove themselves from the benefits of the various laws, have placed themselves in a position where they are financially irresponsible, and they and their families are potential charges 36 upon the public, and a definite and direct burden upon the handicap to proper governmental planning.

THIRTEENTH: That the plaintiffs herein are active, cooperating allies and aids to the employers whose purpose and intention is as aforesaid, to break down the union wage, hour and working conditions, to destroy the union, and to nullify the laws of this State.

Answer.

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FOURTEENTH: That at no time have any of the defendants violated any laws of this State or invaded any of the rights of the plaintiff. They have taken legitimate and proper steps to maintain the union, the union wages, hours and conditions, had sought in the interest of their members and in the interest of the public generally, to insure that the laws of this State are enforced and not evaded, and have acted wholly within their constitutional rights.

WHEREFORE, these defendants demand judgment dismissing the complaint herein, together with the costs and disbursements of this action.

38

RICE & MAGUIRE,
Attorneys for Defendants,
Office & Post Office Address,
122 East 42nd St.,
New York City.

(Verified by Peter J. Sullivan on January 27th,
1939.)

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Reply.

**SUPREME COURT
OF THE STATE OF NEW YORK,
COUNTY OF BRONX.**

[SAME TITLE.]

Plaintiffs, by their attorney, Joseph Apfel, replying to the defendants' defense, allege:

41 1. They deny any knowledge or information sufficient to form a belief as to each and every allegations contained in paragraphs marked "Eighth" and "Ninth."

2. They deny each and every allegations contained in paragraphs marked "Tenth," "Eleventh," "Twelfth," "Thirteenth" and "Fourteenth."

WHEREFORE the plaintiffs demand judgment dismissing the affirmative defense of the defendants herein.

JOSEPH APFEL,
Attorney for Plaintiffs,
Office & P. O. Address,
123 William Street,
Manhattan, New York.

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(Verified February 1st, 1939.)

Plaintiffs' Bill of Particulars.

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SUPREME COURT,**BRONX COUNTY.****[SAME TITLE.]**

The plaintiffs for their Bill of Particulars respectfully allege as follows:

5. The truck used by the plaintiff, Hyman Wohl, is in his own name. It is a Chevrolet 1939 truck, Panel type, Weight 3050, registration #379739, 1939. The truck used by the plaintiff, Louis Platzman, is in the name of his wife, Rose Mary Platzman. It is a 1/2-ton Dodge 1938 truck, registration #386-024, 1939.

44

6. Hyman Bernstein demanded of the plaintiffs that they employ one man a week on the following days: December 6th, 1938; December 15th, 1938; December 16th, 1938; December 24th, 1938; December 23rd, 1938; January 1st, 1939; January 23rd and 25th, 1939. All of said demands were made at 1467 St. Peter's Ave., Bronx, N. Y. He also made a demand on January 24th, 1939, at Bernstein's bakery.

9. The statement that the plaintiffs have to employ help even though their families will starve was made by Hyman Bernstein on December 16th, 1938, at 1467 St. Peter's Ave., Bronx, New York.

45

Dated: March 14th, 1939.

Yours, etc.,

JOSEPH APFEL,

Attorney for Plaintiffs,

123 William St.,

Manhattan, N. Y.

To:

RICE & MAGUIRE, Esqs.,

Attorneys for Defendants.

46 **Plaintiffs' Proposed Findings of Fact and
Conclusions of Law.**

SUPREME COURT

OF THE STATE OF NEW YORK,

COUNTY OF THE BRONX.

[SAME TITLE.]

The issues in this action having regularly come on for trial before this Court at a Special Term, on the 22nd and 23rd days of March, 1939, and the parties hereto having appeared herein by their respective attorneys, I now decide and find as fol-

47 lows:

FINDINGS OF FACT.

1. That the defendant, Bakery and Pastry Drivers and Helpers Local 802 of the International Brotherhood of Teamsters, was and still is a labor union and a voluntary unincorporated association, affiliated with the American Federation of Labor:

Allowed—T. F. N., J. S. C.

2. That the defendant, Peter Sullivan, is the President of the defendant union; that the defendant, Paddy Sullivan, is Secretary-Treasurer thereof; and the defendant, Hyman Bernstein, is business agent thereof.

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Allowed—T. F. N., J. S. C.

3. That the defendants, Peter Sullivan, Paddy Sullivan and Hyman Bernstein, acted individually and as representatives of the said defendant union and within the scope of the powers and authorization given to them.

Allowed—T. F. N., J. S. C.

Plaintiffs' Proposed Findings and Conclusions.

49

4. That the plaintiffs are peddlers engaged in the business of buying baked food products from different manufacturing bakers and reselling them to grocery stores.

Allowed—T. F. N., J. S. C.

5. That the plaintiff, Hyman Wohl, has been a peddler for a period of five years and is the owner of the truck that he uses in his business.

Allowed—T. F. N., J. S. C.

6. That the plaintiff, Louis Platzman, has been a peddler for two years and he also owns the truck that he uses in the distribution of his wares. 50

Allowed—T. F. N., J. S. C.

7. That the plaintiff, Hyman Wohl, purchases the baked products from four different bakeries with whom he has no contractual relations and is at liberty to sever his connections at any time.

Allowed—T. F. N., J. S. C.

8. That the plaintiff, Louis Platzman, buys his merchandise from two bakeries with whom he has no contractual relations and is at liberty to sever his business connections at any time. 51

Allowed—T. F. N., J. S. C.

9. That the earnings of the plaintiffs are based upon the difference between the purchase and the resale price of the products.

Allowed—T. F. N., J. S. C.

52 Plaintiffs' Proposed Findings and Conclusions.

10. That the plaintiff, Hyman Wohl, earns approximately about \$32.00 per week; that he supports his mother and two motherless daughters; and that he works about 33 hours per week.

Allowed—T. F. N., J. S. C.

11. That the income of the plaintiff, Louis Platzman, is about \$35.00 per week; that he is married and an expectant father; and that he works about sixty-five hours per week.

Allowed—T. F. N., J. S. C.

53 12. That neither plaintiff has any employee or assistant, but do all the work alone.

Allowed—T. F. N., J. S. C.

13. That on the 14th day of December, 1938, the defendants sent a member of the union, Greenberg, to the plaintiffs with instructions that they hire him for the day at \$9.00 for said day.

Allowed—T. F. N., J. S. C.

54 14. That on the 16th day of December, 1938, the defendant, Hyman Bernstein, with several members of the defendant union, in the place of business of the Diamond Baking Co., Inc., at 1467 St. Peter's Avenue, Bronx, New York, [threatened to put the plaintiffs out of business], to picket the places of business of the manufacturing bakers who sell to them and also the places of business of the customers who buy from them unless each of the plaintiffs employ a member of the defendant union one day a week to assist them.

*Allowed, except as eliminated—T. F. N., J. S. C.
(Matter in brackets eliminated.)*

Plaintiffs' Proposed Findings and Conclusions.

55

15. That the plaintiffs have not employed a member of the defendant union one day a week to assist them.

Not found—T. F. N., J. S. C.

16. That on the 23rd day of January, 1939, the defendants picketed the place of business of the Diamond Baking Co., Inc., one of the manufacturers selling to the plaintiffs, and the pickets carried the following placards:

HYMAN WOHL

LOUIS PLATZMAN

A BAKERY ROUTE DRIVER WORKS SEVEN DAYS
A WEEK WE ASK EMPLOYMENT FOR A UNION
RELIEF MAN FOR ONE DAY HELP US SPREAD
EMPLOYMENT & MAINTAIN A UNION WAGE
HOUR AND CONDITION.

56

BAKERY & PASTRY DRIVERS & HELPERS
LOCAL 802 I. B. of T. affiliated
with A. F. L.

Allowed—T. F. N., J. S. C.

17. That on the 25th day of January, 1939, the defendants again picketed the place of business of the Diamond Baking Co., Inc., and also the place of business of Bernstein & Dickerman, another manufacturer who sells to the plaintiff, Hyman Wohl.

57

Allowed—T. F. N., J. S. C.

18. That on the 25th day of January, 1939, the defendants followed the plaintiff, Louis Platzman, as he was distributing his products, and the defendants went into the place of business of approximately five of the said plaintiff's customers and

58 Plaintiffs' Proposed Findings and Conclusions.

stated that they would picket them unless they stopped buying merchandise from him.

Allowed—T. F. N., J. S. C.

19. That on the 23rd day of January, 1939, the defendant, Hyman Bernstein, told the Diamond Baking Co., Inc., that it must stop selling the baked products to the plaintiffs otherwise they will be picketed.

Allowed—T. F. N., J. S. C.

59 20. That the plaintiffs are independent jobbers and their incomes and earnings are insufficient to permit them in justice to their families to employ a union member for one day a week.

Found—T. F. N., J. S. C.

21. That all the defendants have appeared and all the parties to this action are before the Court, so that a final disposition may be made.

Allowed—T. F. N., J. S. C.

22. That the plaintiffs have no adequate remedy at law.

Allowed—T. F. N., J. S. C.

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CONCLUSIONS OF LAW:

I decide and find as conclusions of law:

1. That the order of Mr. Justice Charles B. McLaughlin dated January 17th, 1939, established the law of the case in that a labor dispute was not involved in this action and that Section 876a of the Civil Practice Act did not apply.

Allowed—T. F. N., J. S. C.

Plaintiffs' Proposed Findings and Conclusions.

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2. That the plaintiffs are the sole persons required to run their business and therefore they are not subject to picketing by a union or by the defendants who seek to compel them to employ union labor.

Allowed—T. F. N., J. S. C.

3. That the plaintiffs are entitled to a judgment and decree of this Court permanently restraining and enjoining the defendants, the members of the defendant union, their servants, agents and employees, and all other persons acting in conjunction with them from picketing the plaintiffs and the places of business of the manufacturing bakers who sell to them and of the customers who buy from them, and in any other way that may prevent the plaintiffs from peacefully and harmlessly conducting their business.

62

Allowed—T. F. N., J. S. C.

4. That the plaintiffs are entitled to the costs and disbursements of this action.

Found—T. F. N., J. S. C.

Dated: Bronx County, August 25, 1939.

THOMAS F. NOONAN,
Justice of the Supreme Court.

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64 **Defendants' Proposed Findings of Fact and
Conclusions of Law.**

SUPREME COURT

OF THE STATE OF NEW YORK,

COUNTY OF BRONX.

[SAME TITLE.]

(Matter enclosed in brackets was stricken out by
the Court. Matter set in italics was
written in by the Court.)

65 The defendants respectfully submit and ask the
Court to rule upon the following proposed Find-
ings of Fact and Conclusions of Law:

FINDINGS OF FACT.

1. That the defendant, Bakery & Pastry Drivers
and Helpers, Local 802, of the International
Brotherhood of Teamsters, was and still is a labor
union, and a voluntary unincorporated association
affiliated with the American Federation of Labor.

Allowed—T. F. N., J. S. C.

66 2. That the defendant Peter Sullivan is the
president of the defendant union; that the de-
fendant Robert Sullivan, sued herein as "Paddy"
Sullivan, is secretary-treasurer thereof, and the
defendant Hyman Bernstein is a business agent
thereof.

Allowed—T. F. N., J. S. C.

3. That in the matters hereinafter set forth,
said individual defendants acted individually and
as representatives of said defendant union and

Defendants' Proposed Findings and Conclusions. 67

within the scope of the powers and authorization given to them.

Allowed—T. F. N., J. S. C.

4. That, amongst other things, the defendant Union did and still has for its purpose:

"To organize under one banner, all workmen engaged in the craft; * * * to impress upon the teamsters, chauffeurs and the public that a profitable teamster * * * must be honest, sober, intelligent and naturally adapted to the business; * * * to improve the industry by increasing the efficiency of the service and creating a feeling of confidence and good will between employer and employee, which will prevent the recurrence of the unnecessary conflicts which have arisen in the past and to cooperate and deal fairly and honest with all employers * * * and to secure for the teamsters, chauffeurs, stablemen and helpers reasonable hours, fair wages and proper working conditions."

68

Not found—T. F. N., J. S. C.

5. That Local 802 and Local 138, the predecessor union, having labor jurisdiction over bakery drivers in the City of New York, after twenty years or more of organizing activities, have acquired a membership of approximately 1700 bakery drivers, and have secured, so that they have at this time, approximately 200 contracts with bakeries, wherein minimum wages, plus commissions, are required to be paid, which same are substantially in excess of the earnings of "peddlers," hours of employment are prescribed, holidays with pay, that a working

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70 Defendants' Proposed Findings and Conclusions.

week consists of but six days, and that the route must be operated by a relief man on a seventh day.

Not found—T. F. N., J. S. C.

6. That additionally, there have been organized in New York, under the banner of Local 50 of the Bakery and Confectionery Workers, which claims an industrial type of jurisdiction, approximately 1,000 bakery drivers whose wages, hours and working conditions approximate those attained by the members of Local 802.

71 *Allowed—T. F. N., J. S. C.*

7. That these conditions of the approximate 2700 organized drivers have been attained only after many years of effort involving organization of the men, that is, lawfully persuading them to become members of the union, collective bargaining with employers which resulted in agreements, and at times strikes which resulted in agreements, all such agreements prescribing the wages, hours and conditions of bakery drivers.

Allowed—T. F. N., J. S. C.

72 8. That approximately five years ago in New York City there were comparatively few "peddlers" or so-called independent jobbers; that at most they numbered 50 and were largely men who had a long established retail trade.

Allowed—T. F. N., J. S. C.

9. That the Social Security and Unemployment laws were put into effect approximately four years ago.

Allowed—T. F. N., J. S. C.

Defendants' Proposed Findings and Conclusions. 73

10. That thereafter the number of "peddlers" engaged in distributing bakery products increased substantially from year to year, until at this time there are in the City of New York more than 500 "peddlers" or independent jobbers.

Allowed—T. F. N., J. S. C.

11. That in the past eighteen months several baking companies which theretofore operated bakery routes through using employed drivers on routes owned by the companies, at the expiration of their contracts with the union, which contracts prescribed minimum wages, hours, working conditions, etc., and a six-day week, notified the union that they would no longer employ such drivers, that they would no longer become parties to the agreements with the union of the nature aforementioned, and, after discharging the employee drivers, such companies proposed to such employee drivers that they purchase trucks for nominal amounts, in some instances \$50.00, and thereupon, as "peddlers" and jobbers purchasing the baked products from the companies, should undertake to serve such routes. 74

Allowed—T. F. N., J. S. C.

12. That there were at least 150 drivers in such period mentioned in the previous paragraph who were members of the union and working under union conditions and contracts who, within the past eighteen months, were discharged and required to sever their connections with the companies for which they theretofore had worked, unless they agreed to and undertook to act as "peddlers" or distributors, and that in approximately 50 of such 75

76 Defendants' Proposed Findings and Conclusions.

instances the men did become "peddlers" and thereupon abandoned their membership in the union.

Allowed—T. F. N., J. S. C.

13. That "peddlers" or independent jobbers are not covered by Workmen's Compensation Insurance, Social Security or Unemployment Insurance, and that an employer who changes his method of distribution from using employee drivers to "peddlers" or independent jobbers saves considerable by way of premiums and taxes.

Allowed—T. F. N., J. S. C.

77

14. That similarly some small baking establishments, such as the Diamond Bakery, where it had the possibility of extending its output, looked for, solicited and tried to build up distribution of its baked products, by the use of "peddlers."

Not found—T. F. N., J. S. C.

15. That as the number of "peddlers" increased, unemployment amongst union drivers increased, this as a direct result of the "peddlers" working seven days per week and the "peddlers" having a lesser income and other considerations required by the union contract, causing the discharge of union
78 employed drivers through absorption of the business by the "peddlers."

Not found—T. F. N., J. S. C.

16. That through the increase in the use of "peddlers" in the past five years hundreds of union employed drivers have lost employment.

Not found—T. F. N., J. S. C.

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17. That if "peddlers" are to be permitted to increase, uncontrolled and unregulated in any respect, definitely and inevitably, bakers who employ drivers in order to meet competition where the cost of selling and delivery is an important element, will be forced, in order to survive, to adopt the "peddler" method of distribution and to refuse to make an agreement with the union providing for minimum wages, a six-day week, etc.

Not found—T. F. N., J. S. C.

18. That if those who are presently employers and parties to contracts with the union upon the expiration of those contracts, to survive, are required to adopt the "peddler" system of distribution, then the wages, hours, working conditions, six-day week, etc., attained by the union after long years of struggle will be destroyed and lost. 80

Allowed—T. F. N., J. S. C.

19. That an employer who continued after the general establishment of the "peddler" system for distribution of baked products would be unable to profitably carry on his business if he were to pay the union wages and grant the union hours, six-day week and other conditions, would inevitably fail and become a bankrupt. 81

Not found—T. F. N., J. S. C.

20. That the union, in good faith, knowing of the increase in the use of "peddlers" for the distribution of baked products, in the Spring of 1938 made an effort to persuade the "peddlers" to become members of the union.

Allowed—T. F. N., J. S. C.

82 *Defendants' Proposed Findings and Conclusions.*

21. That those "peddlers" who desired to become members of the union were admitted to membership and were only required to conform to and abide by the same Constitution and By-Laws, rules and regulations as were all other members and that included therein was a requirement that no union members should work more than six days per week.

Allowed—T. F. N., J. S. C.

83 22. That the plaintiffs herein were asked to join the union, each of them signed an application to so do, but neither of them appeared at meetings that were thereafter called for those who had made application, nor did they in any further respect act towards the establishment for them of membership in the union.

Allowed—T. F. N., J. S. C.

84 23. That those "peddlers" who did apply for membership and who took the necessary steps to acquire membership, were accepted into full membership in the union and the only requirements imposed upon them were that they conform to the Constitution and By-Laws and comply with the rules and regulations of the union which generally applied to all members.

Allowed—T. F. N., J. S. C.

24. That when a substantial number of "peddlers" refused and declined to become members of the union, the union, after investigation, conference and study, concluded that the unrestricted and unregulated use and extension of the use of "peddlers" for the distribution of baked products

Defendants' Proposed Findings and Conclusions. 85

in the City of New York constituted a direct menace to the maintenance of union wages, hours, conditions, etc.

Not found—T. F. N., J. S. C.

25. That the union thereupon determined that a reasonable restriction and regulation of the "peddlers" was to seek an understanding with him, whether he was a member of the union or not, that he work but six days a week and that he employ for one day in a week an unemployed union member.

Allowed—T. F. N., J. S. C. 86

26. That thereupon the union decided upon a course of appealing to the "peddler" to work but six days a week and to employ an unemployed union man as a relief man on the seventh day, such man to be selected by the "peddler."

Not found—T. F. N., J. S. C.

27. The union further decided that in the event a "peddler" declined to work but six days per week and employ a relief man, that thereupon an appeal would be made to the public by peacefully picketing and truthful statements, in which it would be sought to secure the public support for the cause so espoused by the union. 87

Not found—T. F. N., J. S. C.

28. [The public has an interest in the "peddler" or "independent jobber" distribution, in that] *plaintiffs* are not covered by Workmen's Compensation Insurance.

Allowed, found—T. F. N., J. S. C.

88 Defendants' Proposed Findings and Conclusions.

29. Such "peddlers" in the event of an injury in the course of their duties, and with their limited means, become public wards and charges, and their families are required to be supported by charity or public relief.

Allowed—T. F. N., J. S. C.

30. "Peddlers" are not covered by and are not entitled to the benefits of a Social Security and Unemployment Laws.

Allowed—T. F. N., J. S. C.

89 31. The public has a further interest in that employers who cause "peddlers" to be established through utilizing economic pressure, remove the "peddlers" from the benefit of the Social Security and Unemployment Laws.

Disallowed—T. F. N., J. S. C.

32. The public has a further interest in that the Social Security and Unemployment Laws were enacted as part of the economic planning of the State and Nation, and "peddlers" are removed from and do not come within the benefits of such laws and thereby through the establishment of the "peddler" system, the laws and their intent are nullified, and eventually when they become considered discards or their income becomes so low that they cease their efforts to continue peddling, they become charges on the general public.

90

Disallowed—T. F. N., J. S. C.

33. "Peddlers" generally and the plaintiffs in particular do not carry public liability or prop-

Defendants' Proposed Findings and Conclusions.

91

erty damage insurance, on the trucks which they operate.

Allowed—T. F. N., J. S. C.

34. In the event a member of the public is injured as a result of the operation of "peddlers," particularly the plaintiffs' vehicles, the public meets with financial irresponsibility and nonpayment of damages.

Disallowed—T. F. N., J. S. C.

35. The bread, rolls, etc., sold by "peddlers" is not in a wrapped package when delivered to the retail store or the consumer by the "peddler." The public, in event of a suit for breach of warranty by reason of a foreign substance in the baked product, is faced with financial irresponsibility if its purchase has been from a "peddler."

92

Disallowed—T. F. N., J. S. C.

36. That the baker who distributes through "peddlers" is, for all practical purposes, relieved of financial responsibility to the retailer or consumer as a result of foreign substance which may be found in the baked products.

Disallowed—T. F. N., J. S. C.

93

37. Health laws, rules and regulations are promiscuously violated by "peddlers."

Disallowed—T. F. N., J. S. C.

38. "Peddlers" in their anxiety to secure business and with a complete disregard of sound economic laws, establish sale prices to their cus-

94 Defendants' Proposed Findings and Conclusions.

tomers on the theory that it costs them only their time to serve them, which time they consider of no special value, and thereby create sale prices economically unsound and impossible to compete with by an employer who carries Workmen's Compensation Insurance, Social Security and Unemployment Insurance, and conforms to union wage, hour and other conditions.

Disallowed—T. F. N., J. S. C.

- 95 39. That "stale" returned to "peddlers," meaning "stale"-baked products, which in the custom of the trade, the seller takes back when undisposed of over the retailer's counter, is through unsanitary methods, rehabilitated and resold by "peddlers" for public consumption.

Disallowed—T. F. N., J. S. C.

40. That responsible companies employing employee drivers dispose of "stale" by selling the same as animal feed, fertilizer, or for other purposes than human consumption.

Disallowed—T. F. N., J. S. C.

- 96 41. That one Rubin, who acted as a relief driver for the plaintiff Wohl, has been a bakery driver for a good many years; that in relieving Wohl he worked on his route on Sundays and to service such route he was required to work approximately five hours each Sunday.

Allowed—T. F. N., J. S. C.

42. That plaintiff Wohl testified that the time which he requires to serve the route on Sunday is two hours.

Allowed—T. F. N., J. S. C.

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43. That the actual time required to serve Wohl's route on Sunday is nearer to five hours than it is to two hours.

Withdrawn—T. F. N., J. S. C.

44. That plaintiffs are union members, obligated to conform to the Union Constitution, By-Laws and rules and regulations of the Union, and that as such, in working seven days a week, they violate Union rules and regulations and therefore violate their contracts with the Union.

Not found—T. F. N., J. S. C.

98

45. That in arranging with "peddlers" for relief men, the Union did not insist upon a relief man being paid beyond the time that he actually worked, but on the basis of the Union's daily wage, fixed a scale for part of a day if but part of a day was required for service of a route.

Allowed—T. F. N., J. S. C.

46. That defendant Bernstein, in a conference with the defendant Wohl, offered to arrange to furnish him with a union relief man for Sunday work, at a wage of \$5.00, which same is substantially lower than the union wage required to be paid for a normal day's work.

99

Allowed—T. F. N., J. S. C.

47. That the plaintiff Wohl employed a relief driver for approximately ten weeks, which driver worked on Sundays, it being required that he work approximately five hours each Sunday. That the pay required therefor and which same was paid

100 Defendants' Proposed Findings and Conclusions.

for that relief driver was \$6.00; the normal's day's wage required for a full day being \$9.00.

Allowed—T. F. N., J. S. C.

48. That in many instances where "peddlers" hired a relief man for one day each week, the bakers from whom they purchased their products immediately revised the price for which they bought the baked products, so as to absorb this additional expense to the jobber of distribution of the bakery's products.

101 *Disallowed—T. F. N., J. S. C.*

49. That wherever legally possible and in order to avoid responsibility to those who might be injured by the use of trucks operated by the plaintiff, they keep such trucks in the names of others than themselves.

Disallowed—T. F. N., J. S. C.

50. That the certificate of incorporation of the Diamond Bakery, Inc., includes the right to distribute as well as bake products.

Allowed—T. F. N., J. S. C.

102 51. That the attorney who represents the plaintiffs here was the attorney who incorporated the Diamond Bakery, Inc.

Disallowed—T. F. N., J. S. C.

52. That the attorney who represents the plaintiffs here was an incorporator of the Diamond Bakery, Inc.

Disallowed—T. F. N., J. S. C.

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53. That J. Caspar, President of the Diamond Bakery, Inc., is a member of Local 802 and subject to its Constitution, By-Laws, rules and regulations.

Allowed—T. F. N., J. S. C.

54. That neither the names of Platzman nor Wohl appear in any way on the store window or front of the Diamond Bakery, Inc.

Allowed—T. F. N., J. S. C.

55. That neither the names of Platzman nor Wohl appear on the trucks which they operate in connection with their "peddling" business.

104

Allowed—T. F. N., J. S. C.

56. That such picketing as occurred herein was conducted without any violence whatsoever or threat of violence.

Allowed—T. F. N., J. S. C.

57. That such picketing as was conducted herein was in no respect disorderly.

Allowed—T. F. N., J. S. C.

58. That the placards used by the pickets were accurate and at no time was there any misrepresentation or misstatements made either through placards or oral statement.

105

Allowed—T. F. N., J. S. C.

59. That the defendant Union here has solely acted with the desire and purpose of maintaining union wages, hours and conditions, and in the definite belief that the extension of the "peddler"

Defendants' Proposed Findings and Conclusions.

system, uncontrolled and unregulated, already has partially weakened the maintenance of this Union's wages, etc., and that inevitably it will destroy the Union and that which it has attained.

Not found—T. F. N., J. S. C.

60. That the Union has acted with the further view that the extension of the "peddler" system of distribution, uncontrolled and unregulated, has substantially contributed to unemployment of its members.

Not found—T. F. N., J. S. C.

61. That the union has acted with the further view that the public interest requires some reasonable regulation and control of "peddlers."

Not found—T. F. N., J. S. C.

62. That the union has acted with the further view that the extension of the "peddler" system of distribution is calculated to nullify the Workmen's Compensation Insurance Law, Social Security Act and Unemployment Insurance Law.

Not found—T. F. N., J. S. C.

63. That both of the plaintiffs are members of the defendant union, even though they have been suspended under the Constitution for failure to pay dues.

Not found—T. F. N., J. S. C.

64. That as such members, the said plaintiffs are required to conform to and comply with the Constitution, rules and regulations of the defendant union.

Not found—T. F. N., J. S. C.

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65. That among other rules and regulations of the union, there is a rule which prohibits members from working more than six days per week.

Not found—T. F. N., J. S. C.

66. There is a further rule and regulations of the union binding on its members, which requires a union member who is a "peddler" to employ on his day of rest each week, a union man as a relief driver:

Not found—T. F. N., J. S. C.

67. That each of the plaintiffs is engaged in the business of buying baked products from different manufacturing bakers and reselling them to grocery stores. 110

Allowed—T. F. N., J. S. C.

68. That the plaintiff Wohl has been a "peddler" for approximately five years and operates a truck, the ownership of which is registered in the name of his wife.

Allowed—T. F. N., J. S. C.

69. That the plaintiff Platzman has been a "peddler" for approximately two years and operates a truck, the ownership of which is also registered in the name of his wife. 111

Allowed—T. F. N., J. S. C.

70. That the plaintiff Wohl earns approximately \$32.00 per week, out of which he is required to pay the maintenance and operation costs of the truck used by him in connection with the peddling

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business, and also to carry the credits outstanding on his route.

Allowed—T. F. N., J. S. C.

71. That the plaintiff Platzman earns approximately \$35.00 per week, out of which he is required to pay the maintenance and operation costs of the truck used by him in connection with the peddling business, and also to carry the credits outstanding on his route.

Allowed—T. F. N., J. S. C.

113 72. That the plaintiff Wohl testified that he works approximately thirty-three hours a week, but that this statement is not accurate and his actual working time exceeds such thirty-three hours per week.

Not found—T. F. N., J. S. C.

73. That plaintiff Platzman works approximately sixty-five hours per week.

Allowed—T. F. N., J. S. C.

114 74. That the defendants in acting as hereinafter mentioned, did so solely with the view of attaining the aims and purposes of the union heretofore mentioned, and to promote the welfare of bakery drivers, to procure and enforce fair wages, hours of labor, a day of rest each week, and proper and fair working conditions, and to maintain the conditions attained.

Not found—T. F. N., J. S. C.

75. The defendant Bernstein in behalf of the defendant union, in December, 1938, spoke to each

Defendants' Proposed Findings and Conclusions. 115

of the plaintiffs and requested that each of them employ a relief driver for one day each week.

Found—T. F. N., J. S. C.

76. That it was stated by the said defendant Bernstein to each of the defendants, that in the event they refused to employ a union driver for one day out of each week as a relief man, that a picket line would be established with placards.

Allowed—T. F. N., J. S. C.

77. That each of the plaintiffs refused to employ a union relief man, and continued to work seven days each week. 116

Allowed—T. F. N., J. S. C.

78. That on the 23rd day of January, 1939, the defendant union caused a picket to walk in the vicinity of the place of business of the Diamond Baking Co., Inc., one of the bakers who sold baked products to each of the plaintiffs, and such picket carried a placard reading as follows:

HYMAN WOHL

A BAKERY ROUTE DRIVER WORKS SEVEN DAYS
A WEEK WE ASK EMPLOYMENT FOR A UNION
RELIEF MAN FOR ONE DAY HELP US SPREAD
EMPLOYMENT & MAINTAIN A UNION WAGE
117
HOUR AND CONDITION.

BAKERY & PASTRY DRIVERS & HELPERS
LOCAL 802 I. B. of T. affiliated
with A. F. L.

Allowed—T. F. N., J. S. C.

118 Defendants' Proposed Findings and Conclusions.

79. Similarly, on the 23rd day of January, 1939, a picket carried a placard in the same vicinity bearing the sign:

LOUIS PLATZMAN

A BAKERY ROUTE DRIVER WORKS SEVEN DAYS
A WEEK WE ASK EMPLOYMENT FOR A UNION
RELIEF MAN FOR ONE DAY HELP US SPREAD
EMPLOYMENT & MAINTAIN A UNION WAGE
HOUR AND CONDITION.

BAKERY & PASTRY DRIVERS & HELPERS
LOCAL 802 I. B. of T. affiliated
with A. F. L.

119

Allowed—T. F. N., J. S. C.

80. That the picketing aforementioned lasted less than two hours.

Allowed—T. F. N., J. S. C.

81. That on the 25th day of January, 1939, the defendant union caused two pickets with the placards aforementioned to again picket in the vicinity of the place of business of the Diamond Baking Co., Inc., for less than one hour.

Allowed—T. F. N., J. S. C.

120

82. That on January 25, 1939, the defendant union caused a picket with a placard in the form heretofore mentioned, and on which the name Hyman Wohl appeared, to picket for a very short time in the vicinity of the place of business of Bernstein & Dickerman, a baker from whom the plaintiff Wohl purchased certain baked products.

Allowed—T. F. N., J. S. C.

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83. That the aforementioned placards were truthful in all respects, and contained no mis-statements or misrepresentations.

Allowed—T. F. N., J. S. C.

84. That the picketing so conducted aforementioned, was done in a peaceful and orderly manner, without violence or threat thereof, and in no respect was it or did it create disorder.

Allowed—T. F. N., J. S. C.

85. That at neither of the times aforementioned when picketing was conducted, was there more than two pickets in the vicinity of the place of business of the Diamond Baking Co., Inc., and there was but one picket at the time that picketing was conducted in the vicinity of the place of business of Bernstein & Dickerman. 122

Allowed—T. F. N., J. S. C.

86. It was not established and there was no evidence whatsoever to indicate that either the Diamond Baking Co., Inc., nor Bernstein & Dickerman sustained any monetary loss or damage through the picketing aforementioned in the vicinity of their places of business.

Not found—T. F. N., J. S. C. 123

87. It was not established and there was no evidence that any customers of the Diamond Baking Co., Inc., or Bernstein & Dickerman turned away and failed to deal with such firms by reason of said picketing.

Found—T. F. N., J. S. C.

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88. That on the 25th day of January, 1939, a member of the defendant union followed plaintiff Platzman as he was distributing his products, and went into two or three places of business of said plaintiff's customers, [and truthfully and in an orderly and peaceful manner], advised one of said customers that the union was seeking to persuade the plaintiff to work but six days per week and employ a union driver as a relief man, and further stated to the said one customer that in the event he continued to purchase from plaintiff Platzman, that on the following day a picket would be placed in the vicinity of said store with a placard reading as heretofore set forth.

125

Found, except as eliminated—T. F. N., J. S. C.

89. That neither of the plaintiffs established, or even offered evidence showing or tending to show that they sustained monetary loss to any extent.

Found—T. F. N., J. S. C.

90. That that which was done by the defendants and as heretofore mentioned, was done in a peaceful and orderly manner, [that no misstatements or misrepresentations whatsoever were made, and solely for the purposes heretofore mentioned, and in the belief that the same was an aid to the attainment of such purposes aforementioned].

126

Found, except as eliminated—T. F. N., J. S. C.

91. That in fact the action of the defendants could reasonably be expected to aid in the carrying out of the purposes of the defendant union.

Not found—T. F. N., J. S. C.

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CONCLUSIONS OF LAW.

1. That the plaintiffs have an adequate remedy at law.

Not found—T. F. N., J. S. C.

2. That this case is a "labor dispute" as defined in Section 876-a of the Civil Practice Act.

Not found—T. F. N., J. S. C.

3. That the plaintiffs have failed to comply with Section 876-a of the Civil Practice Act and should be non-suited.

Not found—T. F. N., J. S. C.

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4. It was lawful for the defendants to seek to maintain the wage, hours and working conditions under which its members were employed, including the requirement that each member have one day of rest in seven.

Not found—T. F. N., J. S. C.

5. It was lawful for the defendants to seek to carry out its lawful purposes.

Not found—T. F. N., J. S. C.

6. It was lawful for the defendants to seek to have plaintiffs discontinue working seven days per week, and work but six days per week. 129

Not found—T. F. N., J. S. C.

7. It was lawful for the defendants to seek to have the plaintiffs employ as relief drivers for one day each week, an unemployed member of the union.

Not found—T. F. N., J. S. C.

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8. It was lawful for the defendants to seek to persuade the plaintiffs to become members of the defendant union.

Not found—T. F. N., J. S. C.

9. It was lawful for the defendant union to have a rule and regulation requiring that defendant union's members should work no more than six days per week.

Not found—T. F. N., J. S. C.

131 10. It was lawful for the defendants to truthfully advise the public of its cause, whether in the vicinity of the places of business of bakers who sold to the plaintiffs, or otherwise.

Not found—T. F. N., J. S. C.

11. That the primary purpose of the defendants herein was lawful.

Not found—T. F. N., J. S. C.

12. That substantial and irreparable damage to the plaintiffs has not been established.

Not found—T. F. N., J. S. C.

132 13. That the plaintiffs have acted inequitably and are not entitled to equitable relief at the hands of this Court.

Not found—T. F. N., J. S. C.

14. That it was a constitutional right of the defendants to advise the public, accurately and truthfully and without violence or breach of the peace, that defendants worked seven days a week, and that

Defendants' Proposed Findings and Conclusions. 133

the defendants were seeking to secure employment from the plaintiffs for unemployed members of the union, one day a week.

Not found—T. F. N., J. S. C.

15. That this Court lacks jurisdiction to grant the relief sought.

Not found—T. F. N., J. S. C.

16. That the plaintiffs should be non-suited.

Not found—T. F. N., J. S. C.

17. That the defendants should have judgment dismissing the complaint upon the merits, with costs. 134

Not found—T. F. N., J. S. C.

Respectfully submitted,

RICE & MAGUIRE,
Attorneys for Defendants,
Office & P. O. Address,
122 East 42nd Street,
Borough of Manhattan,
City of New York.

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Decision.

**SUPREME COURT
OF THE STATE OF NEW YORK,
COUNTY OF BRONX.**

[SAME TITLE.]

137

The issues of the above entitled action having been brought on for trial before Mr. Justice Thomas F. Noonan, without a jury, at a Special Term for trials of this Court, held at the County Court House, in the Borough of Bronx, City and State of New York, on March 22 and 23, 1939, and plaintiffs having appeared by Joseph Apfel, their attorney, and the defendants having appeared by Rice & Maguire, their attorneys, Edward C. Maguire, of counsel, and the issues in the above action having been duly tried on the date aforementioned and the Court having heard the allegations and proofs of the parties and argument of counsel, and proposed findings of fact and conclusions of law submitted in behalf of the plaintiffs and defendants having been passed upon and due deliberation having been had thereon, I do hereby decide and find as follows:

FINDINGS OF FACT.

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1. That the defendant, Bakery and Pastry Drivers and Helpers Local 802 of the International Brotherhood of Teamsters, was and still is a labor union and a voluntary unincorporated association, affiliated with the American Federation of Labor.

2. That the defendant, Peter Sullivan, is the President of the defendant union; that the defendant, Paddy Sullivan, is Secretary-Treasurer thereof; and the defendant, Hyman Bernstein, is business agent thereof.

Decision.

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3. That the defendants, Peter Sullivan, Paddy Sullivan and Hyman Bernstein, acted individually and as representatives of the said defendant union and within the scope of the powers and authorization given to them.

4. That the plaintiffs are peddlers engaged in the business of buying baked food products from different manufacturing bakers and reselling them to grocery stores.

5. That the plaintiff, Hyman Wohl, has been a peddler for a period of five years and is the owner of the truck that he uses in his business.

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6. That the plaintiff, Louis Platzman, has been a peddler for two years and he also owns the truck that he uses in the distribution of his wares.

7. That the plaintiff, Hyman Wohl, purchases the baked products from four different bakeries with whom he has no contractual relations and is at liberty to sever his connections at any time.

8. That the plaintiff, Louis Platzman, buys his merchandise from two bakeries with whom he has no contractual relations and is at liberty to sever his business connections at any time.

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9. That the earnings of the plaintiffs are based upon the difference between the purchase and the resale price of the products.

10. That the plaintiff, Hyman Wohl, earns approximately about \$32.00 per week; that he supports his mother and two motherless daughters; and that he works about 33 hours per week.

Decision.

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11. That the income of the plaintiff, Louis Platzman, is about \$35.00 per week; that he is married and an expectant father; and that he works about sixty-five hours per week.

12. That neither plaintiff has any employee or assistant, but do all the work alone.

13. That on the 14th day of December, 1938, the defendants sent a member of the union, Greenberg, to the plaintiffs with instructions that they hire him for the day at \$9.00 for said day.

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14. That on the 16th day of December, 1938, the defendant Hyman Bernstein, with several members of the defendant union, in the place of business of the Diamond Baking Co., Inc., at 1467 St. Peter's Avenue, Bronx, New York, threatened to picket the places of business of the manufacturing bakers who sell to them and also the places of business of the customers who buy from them unless each of the plaintiffs employ a member of the defendant union one day a week to assist them.

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15. That on the 23rd day of January, 1939, the defendants picketed the place of business of the Diamond Baking Co., Inc., one of the manufacturers selling to the plaintiffs, and the pickets carried the following placards:

HYMAN WOHL

LOUIS PLATZMAN

A BAKERY ROUTE DRIVER WORKS SEVEN DAYS
A WEEK WE ASK EMPLOYMENT FOR A UNION
RELIEF MAN FOR ONE DAY HELP US SPREAD
EMPLOYMENT & MAINTAIN A UNION WAGE
HOUR AND CONDITION.

BAKERY & PASTRY DRIVERS & HELPERS
LOCAL 802 I. B. of T. affiliated
with A. F. L.

16. That on the 25th day of January, 1939, the defendants again picketed the place of business of Bernstein & Dickerman, another manufacturer who sells to the plaintiff, Hyman Wohl.

17. That on the 25th day of January, 1939, the defendants followed the plaintiff, Louis Platzman, as he was distributing his products, and the defendants went into the place of business of approximately five of the said plaintiff's customers and stated that they would picket them unless they stopped buying merchandise from him.

18. That on the 23rd day of January, 1939, the defendant, Hyman Bernstein, told the Diamond Baking Co., Inc., that it must stop selling the baked products to the plaintiffs otherwise they will be picketed.

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19. That the plaintiffs are independent jobbers and their incomes and earnings are insufficient to permit them in justice to their families to employ a union member for one day a week.

20. That all the defendants have appeared and all the parties to this action are before the Court, so that a final disposition may be made.

21. That the plaintiffs have no adequate remedy at law.

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22. That the defendant, Bakery & Pastry Drivers and Helpers, Local 802, of the International Brotherhood of Teamsters, was and still is a labor union, and a voluntary unincorporated association affiliated with the American Federation of Labor.

23. That the defendant, Peter Sullivan, is the president of the defendant union; that the defendant, Robert Sullivan, sued herein as "Paddy" Sullivan, is secretary-treasurer thereof, and the defendant, Hyman Bernstein, is a business agent thereof.

24. That in the matters hereinafter set forth, said individual defendants acted individually and as representatives of said defendant union and within the scope of the powers and authorization given to them.

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25. That additionally, there have been organized in New York, under the banner of Local 50 of the Bakery and Confectionery Workers, which claims an industrial type of jurisdiction, approximately 1,000 bakery drivers whose wages, hours and working conditions approximate those attained by the members of Local 802.

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26. That these conditions of the approximate 2700 organized drivers have been attained only after many years of effort involving organization of the men, that is, lawfully persuading them to become members of the union, collective bargaining with employers which resulted in agreements, and at times strikes which resulted in agreements, all such agreements prescribing the wages, hours and conditions of bakery drivers.

27. That approximately five years ago in New York City there were comparatively few "peddlers" or so-called independent jobbers; that at most they numbered 50 and were largely men who had a long established retail trade.

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28. That the Social Security and Unemployment laws were put into effect approximately four years ago.

29. That thereafter the number of "peddlers" engaged in distributing bakery products increased substantially from year to year, until at this time there are in the City of New York more than 500 "peddlers" or independent jobbers.

30. That in the past eighteen months several baking companies which theretofore operated bakery routes through using employed drivers on routes owned by the companies, at the expiration of their contracts with the union, which contracts prescribed minimum wages, hours, working conditions, etc., and a six-day week, notified the union that they would no longer employ such drivers, that they would no longer become parties to the agreements with the union of the nature aforementioned, and, after discharging the employee drivers, such companies proposed to such employee drivers that they purchase trucks for nominal amounts, in some instances \$50.00, and thereupon, as "peddlers" and jobbers purchasing the baked products from the companies, should undertake to serve such routes.

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31. That there were at least 150 drivers in such period mentioned in the previous paragraph who were members of the union and working under union conditions and contracts who, within the past eighteen months, were discharged and required to sever their connections with the companies for which they theretofore had worked, unless they agreed to and undertook to act as "peddlers" or

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distributors, and that in approximately 50 of such instances the men did become "peddlers" and thereupon abandoned their membership in the union.

32. That "peddlers" or independent jobbers are not covered by Workmen's Compensation Insurance, Social Security or Unemployment Insurance, and that an employer who changes his method of distribution from using employee drivers to "peddlers" or independent jobbers saves considerable by-way of premiums and taxes.

33. That if those who are presently employers and parties to contracts with the unions upon the expiration of those contracts, to survive, are required to adopt the "peddler" system of distribution, then the wages, hours, working conditions, six-day week, etc., attained by the union after long years of struggle will be destroyed and lost.

34. That the union, in good faith, knowing of the increase in the use of "peddlers" for the distribution of baked products, in the Spring of 1938 made an effort to persuade the "peddlers" to become members of the union.

35. That those "peddlers" who desired to become members of the union were admitted to membership and were only required to conform to and abide by the same Constitution and By-Laws, rules and regulations as were all other members and that included therein was a requirement that no union members should work more than six days per week.

36. That the plaintiffs herein were asked to join the union, each of them signed an application to so do, but neither of them appeared at meetings

that were thereafter called for those who had made applications, nor did they in any further respect act towards the establishment for them of membership in the union.

37. That those "peddlers" who did apply for membership and who took the necessary steps to acquire membership, were accepted into full membership in the union and the only requirements imposed upon them were that they conform to the Constitution and By-Laws and comply with the rules and regulations of the union which generally applied to all members.

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38. That the union thereupon determined that a reasonable restriction and regulation of the "peddlers" was to seek an understanding with him, whether he was a member of the union or not, that he work for six days a week and that he employ for one day in a week an unemployed union member.

39. Plaintiffs are not covered by Workmen's Compensation Insurance.

40. Such "peddlers" in the event of an injury in the course of their duties, and with their limited means, become public wards and charges, and their families are required to be supported by charity or public relief.

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41. "Peddlers" are not covered by and are not entitled to the benefits of a Social Security and Unemployment Laws.

42. "Peddlers" generally and the plaintiffs in particular do not carry public liability or property

damage insurance, on the trucks which they operate.

43. That one Rubin, who acted as a relief driver for the plaintiff Wohl, has been a bakery driver for a good many years; that in relieving Wohl he worked on his route on Sundays and to service such route he was required to work approximately five hours each Sunday.

44. That plaintiff Wohl testified that the time which he requires to serve the route on Sunday is two hours.

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45. That in arranging with "pecklers" for relief men, the Union did not insist upon a relief man being paid beyond the time that he actually worked, but on the basis of the Union's daily wage, fixed a scale for part of a day if but part of a day was required for service of a route.

46. That defendant Bernstein, in a conference with the defendant Wohl, offered to arrange to furnish him with a union relief man for Sunday work, at a wage of \$5.00, which same is substantially lower than the union wage required to be paid for a normal day's work.

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47. That the plaintiff Wohl employed a relief driver for approximately ten weeks, which driver worked on Sundays, it being required that he work approximately five hours each Sunday. That the pay required therefor and which same was paid for that relief driver was \$6.00, the normal day's wage required for a full day being \$9.00.

48. That the certificate of incorporation of the Diamond Bakery, Inc., includes the right to distribute as well as bake products.

49. That J. Caspar, President of the Diamond Bakery, Inc., is a member of Local 802 and subject to its Constitution, By-Laws, rules and regulations.

50. That neither the names of Platzman nor Wohl appear in any way on the store window or front of the Diamond Bakery, Inc.

51. That neither the names of Platzman nor Wohl appear on the trucks which they operate in connection with their "peddling" business.

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52. That such picketing as occurred herein was conducted without any violence whatsoever or threat of violence.

53. That such picketing as was conducted herein was in no respect disorderly.

54. That the placards used by the pickets were accurate and at no time was there any misrepresentation or misstatements made either through placards or oral statement.

55. That each of the plaintiffs is engaged in the business of buying baked products from different manufacturing bakers and reselling them to grocery stores.

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56. That the plaintiff Wohl has been a "peddler" for approximately five years and operates a truck, the ownership of which is registered in the name of his wife.

57. That the plaintiff Platzman has been a "peddler" for approximately two years and operates a truck, the ownership of which is also registered in the name of his wife.

58. That the plaintiff Wohl earns approximately \$32.00 per week, out of which he is required to pay the maintenance and operation costs of the truck used by him in connection with the peddling business, and also to carry the credits outstanding on his route.

167 59. That the plaintiff Platzman earns approximately \$35.00 per week, out of which he is required to pay the maintenance and operation costs of the truck used by him in connection with the peddling business, and also to carry the credits outstanding on his route.

60. That plaintiff Platzman works approximately sixty-five hours per week.

61. The defendant Bernstein in behalf of the defendant union, in December, 1938, spoke to each of the plaintiffs and requested that each of them employ a relief driver for one day each week.

168 62. That it was stated by the said defendant Bernstein to each of the defendants, that in the event they refused to employ a union driver for one day out of each week as a relief man, that a picket line would be established with placards.

63. That each of the plaintiffs refused to employ a union relief man, and continued to work seven days each week.

64. That on the 23rd day of January, 1939, the defendant union caused a picket to walk in the vicinity of the place of business of the Diamond Baking Co., Inc., one of the bakers who sold baked products to each of the plaintiffs, and such picket carried a placard reading as follows:

HYMAN WOHL

A BAKERY ROUTE DRIVER WORKS SEVEN DAYS
A WEEK WE ASK EMPLOYMENT FOR A UNION
RELIEF MAN FOR ONE DAY HELP US SPREAD
EMPLOYMENT & MAINTAIN A UNION WAGE
HOUR AND CONDITION

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BAKERY & PASTRY DRIVERS & HELPERS
LOCAL 802 I. B. of T. affiliated
with A. F. L.

65. Similarly, on the 23rd day of January, 1939, a picket carried a placard in the same vicinity bearing the sign:

LOUIS PLATZMAN

A BAKERY ROUTE DRIVER WORKS SEVEN DAYS
A WEEK WE ASK EMPLOYMENT FOR A UNION
RELIEF MAN FOR ONE DAY HELP US SPREAD
EMPLOYMENT & MAINTAIN A UNION WAGE
HOUR AND CONDITION

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BAKERY & PASTRY DRIVERS & HELPERS
LOCAL 802 I. B. of T. affiliated
with A. F. L.

66. That the picketing aforementioned, lasted less than two hours.

67. That on the 25th day of January, 1939, the defendant union caused two pickets with the plac-

ards aforementioned to again picket in the vicinity of the place of business of the Diamond Baking Co., Inc., for less than one hour.

68. That on January 25, 1939, the defendant union caused a picket with a placard in the form heretofore mentioned, and on which the name Hyman Wohl appeared, to picket for a very short time in the vicinity of the place of business of Bernstein & Dickerman, a baker from whom the plaintiff Wohl purchased certain baked products.

173 69. That the aforementioned placards were truthful in all respects, and contained no misstatements or misrepresentations.

70. That the picketing so conducted aforementioned, was done in a peaceful and orderly manner, without violence or threat thereof, and in no respect was it or did it create disorder.

71. That at neither of the times aforementioned when picketing was conducted, was there more than two pickets in the vicinity of the place of business of the Diamond Baking Co., Inc., and there was but one picket at the time that picketing was conducted in the vicinity of the place of business of
174 Bernstein & Dickerman.

72. It was not established and there was no evidence that any customers of the Diamond Baking Co., Inc., or Bernstein & Dickerman turned away and failed to deal with such firms by reason of said picketing.

73. That on the 25th day of January, 1939, a member of the defendant union followed plaintiff

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Platzman as he was distributing his products, and went into two or three places of business of said plaintiff's customers and advised one of said customers that the union was seeking to persuade the plaintiff to work but six days per week and employ a union driver as a relief man, and further stated to the said one customer that in the event he continued to purchase from plaintiff Platzman, that on the following day a picket would be placed in the vicinity of said store with a placard reading as heretofore set forth.

74. That neither of the plaintiffs established, or even offered evidence showing or tending to show that they sustained monetary loss to any extent.

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75. That that which was done by the defendants and as heretofore mentioned, was done in a peaceful and orderly manner.

CONCLUSIONS OF LAW.

I decide and find as conclusions of law:

1. That the order of Mr. Justice Charles B. McLaughlin, dated January 17, 1939, established the law of the case in that a labor dispute was not involved in this action and that Section 876a of the Civil Practice Act did not apply and upon the facts as found a labor dispute was not involved.

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2. That the plaintiffs are the sole persons required to run their business and therefore they are not subject to picketing by a union or by the defendants who seek to compel them to employ union labor.

3. That the plaintiffs are entitled to a judgment and decree of this Court permanently restraining and enjoining the defendants, the members of the defendant union, their servants, agents and employees, and all other persons acting in conjunction with them from picketing the plaintiffs and the places of business of the manufacturing bakers who sell to them and of the customers who buy from them, and in any other way that may prevent the plaintiffs from peacefully and harmlessly conducting their businesses.

179 4. That the plaintiffs are entitled to the costs and disbursements of this action.

Dated: Bronx County, October 27, 1939.

THOMAS F. NOONAN,
Justice of the Supreme Court.

Judgment Appealed From.

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At a Special Term of the Supreme Court of the State of New York, held in and for the County of Bronx, at the Courthouse in the Bronx County Building, 161st St. and Grand Concourse, in the Borough of Bronx, City of New York, on the 23th day of October, 1939.

Present: HON. THOMAS F. NOONAN, *Justice*.

[SAME TITLE.]

This action having duly come on to be tried before Hon. Thomas F. Noonan, a Justice of the Supreme Court of the State of New York, without a jury, on March 22nd and 23rd, 1939, at a Special Term of this Court, held in and for the County of Bronx, City and State of New York, and the plaintiffs having appeared by their attorney, Joseph Apfel, Esq., and the defendants having appeared by their attorneys, Rice & Maguire, Esqs. (Edward C. Maguire, of counsel), and the evidence and proofs of the respective parties hereto having been duly heard and submitted, and the Court having rendered its opinion in writing and also having made Findings of Fact and Conclusions of Law:

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Now, on motion of Joseph Apfel, attorney for the plaintiffs, and after due deliberation, it is hereby

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ORDERED, ADJUDGED AND DECREED that the defendants, and each of them, the members of the defendant union, their servants, agents and employees, and all other persons acting in conjunction with them, shall be and hereby are perpetually restrained and enjoined:

Judgment Appealed From.

(a) From picketing the places of business of manufacturing bakers who sell to the plaintiffs or either of them because of the fact that said manufacturing bakers sell to these plaintiffs; and

(b) From picketing the places of business of customers of these plaintiffs because such customers purchase baked products from these plaintiffs; and it is further

185 ORDERED, ADJUDGED AND DECREED that the plaintiffs have judgment for costs and disbursements amounting to \$124.15 to be taxed by the Clerk, and the Clerk of the County of Bronx is hereby authorized and directed to insert said amount in said judgment herein.

Enter,

THOMAS F. NOONAN,

J. S. C.

MICHAEL B. McHUGH,

Clerk.

Nov. 1st, 1939.

Case and Exceptions.

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SUPREME COURT,**BRONX COUNTY.****SPECIAL TERM—PART I.****[SAME TITLE.]****March 22, 1939.****Before: HON. THOMAS F. NOONAN, Justice.****APPEARANCES:****JOSEPH APFEL, Esq., attorney for plaintiffs. 188****RICE & MAGUIRE, Esqs. (by EDWARD C. MAGUIRE, Esq.), attorneys for defendants.**

HYMAN BERNSTEIN, 609 East 170th Street, Bronx, New York City, one of the defendants, called as a witness in behalf of the plaintiffs, being first duly sworn, testified as follows:

Direct examination by Mr. Apfel.

Q. Mr. Bernstein, are you one of the defendants in this action? A. Yes.

Q. Are you also the business agent of this Bakery Union? A. Yes, sir. 189

Q. Is it one of your duties as business agent of this union to go among bakeries and jobbers and peddlers to obtain employment for members of the union? A. It is.

Q. In the course of your duties did you go to these plaintiffs and demand the employment by them of some union help? A. I did.

HYMAN WOHL, 1115 Westchester Avenue, Bronx, New York City, one of the plaintiffs, called as a witness in his own behalf, being first duly sworn, testified as follows:

Direct examination by Mr. Apfel.

Q. Mr. Wohl, are you one of the plaintiffs in this action? A. Yes.

Q. What is your business or occupation? A. I am a peddler.

Q. What do you mean by peddler? A. Well, I buy merchandise and peddle it. I buy merchandise and peddle it between the stores.

Q. How long have you been in this business. A. Five years.

Q. During that period of five years have you been dealing with several bakeries? A. Yes.

Q. At the present time with how many bakeries are you doing business? A. Four.

Q. That is, you buy from four different bakeries? A. Yes.

The Court: You say you buy—

The Witness: I buy my merchandise, yes.

Q. And you resell this merchandise to grocery stores? A. Yes.

Q. Can you tell us the names of those four different bakeries and their addresses from whom you purchase merchandise? A. Yes; Diamond Bakery, 1467 St. Peters Avenue, Bronx; Burnstein & Dickerman, 1945 Daly Avenue, Bronx; Mr. Wopner, Belmont Avenue and East 180th Street; Mr. Pyrex, 3197 East Tremont Avenue.

Q. Mr. Wohl, how long have you been doing business with the Diamond Baking Company? A. Three years.

Q. How long have you been doing business with Burnstein & Dickerman? A. A year and a half.

Q. And with Wopner? A. A year and a half.

Q. And with Pyrex? A. Three years.

Q. Have you any agreement or contracts with any one of these bakeries that you are compelled to buy from them baked products? A. No, sir.

Q. You are at any time at liberty to change the bakeries from whom you buy baked products? A. Yes.

Q. In the course of your business have you had a truck? A. Yes.

Q. How long have you had the truck? A. Five years.

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Q. In your own name? A. Yes.

Q. I show you a paper and ask you what that paper is? A. That is my bill of sale of the last truck that I bought.

Q. When did you buy that last truck? A. On December 7, 1938.

Q. Those papers that are attached, are those the moneys you have paid on account of the truck? A. This is the receipts of the three notes I pay on the truck.

Q. How much do you pay on the truck? A. \$21.62 a month.

Mr. Apfel: I offer this paper in evidence. 195

By the Court.

Q. How much did you pay on this truck? A. Three notes, your Honor.

Q. Three notes of \$21.52? A. The first note was \$12.90; the next two notes were \$21.62.

Q. You said you bought the truck when? A. December 7, 1938.

Q. This is not the same truck you owned for five years? A. No; this is the last truck I bought.

Mr. Maguire: I object to it as immaterial and irrelevant.

The Court: He wants to prove he owns the truck.

Mr. Maguire: I don't think it is material to the case, whether or not he does own it.

Mr. Apfel: It is quite material in this case.

The Court: Isn't it some evidence of the fact he has engaged in business on his own account? I will overrule your objection.

Mr. Maguire: Exception.

(The paper was received in evidence and marked Plaintiff's Exhibit 1.)

By Mr. Apfel.

Q. Before this truck did you own another truck?

A. Yes.

Q. In your own name? A. Yes.

Q. And for the past five years you owned trucks in your own name; is that right? A. Yes.

Q. When you sell this merchandise to the various grocers do you sell it at the same prices to all of them? A. Various prices.

Q. Your profit is the difference between the amount you sell it for and the amount you buy it for? A. Yes.

Q. Do you take back any sales? A. Yes.

Q. And that goes against your profit? A. That is my own loss.

Q. What are your approximate weekly earnings for the past six months? A. My approximate earn-

ings is \$32 a week, but from the \$32 a week I have to pay \$5 a week notes, according to the truck I bought.

Q. You also have to maintain your family, is that right? A. Right.

Q. How big is your family? A. I have a mother of seventy; and two daughters.

Q. Do the daughters live with you? A. I keep them out boarding.

Q. And you pay for the board? A. Yes.

Q. Do you employ anybody? A. No, sir.

Q. At the present time do you need anyone? A. No, sir.

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Mr. Maguire: Objected to, whether he needs it.

The Court: I will let it be answered; you may have an exception. Overruled.

Mr. Maguire: Exception.

Q. How many hours a week do you work? A. I work for thirty to thirty-five hours a week.

Q. That is, you work seven days or six days a week? A. I work six days, and two hours on Sunday, the seventh.

Q. Altogether, including two hours on Sunday, you work between thirty and thirty-three hours?

A. Yes.

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Q. You are able in your own way to manage your own business? A. I have not got enough work for myself.

Q. Do you know Mr. Bernstein, the previous witness? A. Yes.

Q. How long have you known him? A. Oh, about, maybe seven or eight months.

Q. Did you see him in the month of December, 1938? A. The first time I seen him in the month of December was on December 16th.

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Hyman Wohl—For Plaintiffs—Direct.

Q. Did you see anybody from the union prior to December 16th? A. Yes.

Q. Prior to seeing this member of the union, did you have a conversation with Leo Leibowitz? A. I did.

Q. Who is Leo Leibowitz? A. Proprietor of the Diamond Bakery.

Q. When did you see these men from the union, on what day? A. Well, on the morning of the 14th of December.

Q. Where did you see them? A. I seen them in the shop of the Diamond Bakery.

203 Q. Do you see those men in court to-day? A. I think I see two of them here.

Q. Will you point them out? A. Well, there is Mr. Greenberg there.

Mr. Apfel: Mr. Greenberg, stand up.

(A man stands.)

The Witness: Yes, that is right; then there is a bald headed fellow, I don't see him so good from here. I think he is the second man on the front row. They call him Baldy.

(The man pointed out states his name is Zuckerman.)

The Witness: There were a couple of other fellows there.

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Q. When did you see them? A. I saw them on the morning of the 14th.

Q. What time in the morning? A. Around 10 o'clock.

Q. Will you tell us the conversation you had with them, if you had any conversation?

Mr. Maguire: I object to that as incompetent, irrelevant and immaterial.

The Court: They will have to be connected, of course; he says they represented the union.

Mr. Apfel: Yes; I am trying to connect it up.

The Court: I will take it subject to connection.

Q. Will you tell us the conversation?

By the Court.

Q. With whom did you talk, naming the parties?

A. I was standing in the back of the bakery.

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Q. What bakery? A. The bakery of the Diamond Baking Company, when about four or five union men came in, and I think it was Mr. Green—no, this Baldy.

By Mr. Apfel.

Q. Zuckerman? A. Mr. Zuckerman gives me a letter.

Q. Have you got that letter with you? A. No, sir.

Q. What did you do with that letter? A. I returned it to him.

Mr. Apfel: Mr. Maguire, I demand that you produce the letter pursuant to notice to produce served upon you. Have you got such letter?

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Mr. Maguire: I haven't any such letter.

Q. He gave you that letter, you testified? A. Yes.

Q. What did you do with that letter? A. I returned it to him; I read it and returned it to him.

Q. Who signed that letter? A. The business agent, Hyman Bernstein.

Q. On whose stationery was that letter? A. On the stationery of Local 802, Pastry Drivers.

Q. What was in that letter? A. The letter stated: "Mr. Hyman Wohl: This is to introduce Mr. Greenberg who will come to work for you in your place Sunday."

Q. After you gave the letter back to him was anything said? A. I answered him, that I have no work for him, and I could not afford to pay him \$9 for a day's work, so the party that handed me the letter said, "Well, let us follow him up, boys, and let us picket his stores." That is what the answer was.

Q. What did you say, if anything? A. I said, "Well, don't get so excited, I will see Mr. Bernstein about it."

Q. And they left after that? A. They left after that.

Q. When did you see Mr. Bernstein? A. I seen Mr. Bernstein on the morning of December 16th, on a Friday, about 10 o'clock in the morning.

Q. Where did you see him? A. In the bakery shop of the Diamond Baking Company.

Q. Was Mr. Bernstein alone? A. Well, before Mr. Bernstein came—

Q. Was Mr. Bernstein alone? A. No.

Q. He came into the Diamond Baking Company with how many men? A. Oh, about four men.

Q. When he came in who was present in the Diamond Baking Company? A. Well, there was about four or five other union men that came in about an hour before him.

Q. Yes; and who else? A. Mr. Platzman was present.

Q. That is the other plaintiff? A. That is right.

Q. Who else? A. Mr. Leibowitz was present, and Mr. Applebaum was present, and Mr.—that is about all, I guess.

Q. When Bernstein came in on that day did he say anything? A. When Bernstein came in he walked over to Mr. Platzman first.

Q. What did he say? A. He says to Platzman, "Why didn't you leave that man work this morning that I sent in?" And Mr. Platzman answered, "I could not afford it, and I have no work for myself, and I cannot afford to pay money out that I don't need, for \$9 a day." And Mr. Platzman said, "What do you want me to do in order for you, \$9, I should starve?" 212

Q. What did Mr. Bernstein say? A. Mr. Bernstein answered, "I don't care what you do, if you eat or if you don't eat, but the \$9 must be paid regardless." Then Mr. Bernstein said, "If you cannot pay the \$9, take your truck, put it in storage, and get out of business." 213

Q. What did Mr. Platzman say to that? A. Mr. Platzman said that he could not give him a day's work, and he cannot pay them, and regardless, when he will send a man in, he will not hire him, will not pay him.

Q. What else happened? A. Then Mr. Bernstein turned to Mr. Leibowitz, the proprietor of the Diamond Bakery, and said, "Regardless, I don't want to know; you will have to pay for the day, if Platzman don't pay for the day's work." He then ordered Mr. Leibowitz not to bake any merchandise for me and for Mr. Platzman. 214

Q. What else happened after that? A. After that Mr. Bernstein, the delegate of Local 802, said—turned to two of his men and told two of his men.

"You go to the rear of my car, take out a sign there, follow up Mr. Platzman and see to it that in any place he delivers any merchandise, to tell the customers that if they accept the merchandise they will picket his store."

Q. What happened after that, did these two men go out? A. Well, the two men followed him around, going out of the bakery, just watching for him to come away.

Q. What happened after that? A. After that he turned to me, he says, "I want you to know that the same thing goes for you."

Q. What was the tone of voice that was used by Mr. Bernstein? A. Well, it was loud, naturally, pretty hollering voice, that you could hear it all the way outside the store.

Q. What was said or what was done, if anything, after that? A. Well, he pointed to me, he said, "The same goes for you." So I told him that "I cannot afford to pay \$9, Mr. Bernstein, and I ain't got enough work for myself. I have only got five hours' work a day; I have only got maybe two hours' work on Sunday." He said, "I don't want to know what happens: \$9 must be paid for a day's work, regardless of when I sent them in." I then, in order to get rid of Mr. Bernstein—he told me he would send in a man three days later, on a Sunday, and in order for me to get rid of him, I told him not to chalk me up Sunday, but send him in a week, the following Sunday, then it was arranged he was going to send in somebody a week from the following Sunday, and we walked out.

Q. How long did this conversation or episode you have just described take? A. Oh, it took about three-quarters of an hour.

Q. When he walked out, how many men walked out with Mr. Bernstein? A. Oh, about ten men.

Q. When did you see Mr. Bernstein after that?
A. I have seen Mr. Bernstein on the 24th of December.

Q. Where did you see him? A. I seen him at his house.

Q. That is the time you had a summons served upon him? A. That is right.

Q. When did you see him after that? A. Off, I did not see him until—

Mr. Maguire: Just a minute; I move that reference to a summons be stricken out. We do not want any inference in here; I never heard of a summons.

Mr. Apfel: I consent to it; it is immaterial.

Q. When did you see Mr. Bernstein after that?
A. I seen Mr. Bernstein some time in January, after that.

Q. When in January? A. Oh, I think around the 23rd of January.

Q. Where did you see him? A. In the Diamond Bakery.

Q. Was that at the time members of Local Union 802 were picketing in front of the Diamond Baking Company? A. Yes.

Q. Did you see those pickets? A. Yes.

Q. Did they have signs on? A. Yes.

Q. Do you know what the signs contained—

Mr. Maguire: Possibly we can stipulate that; read it from your papers.

Mr. Apfel: I have it; he made a copy of it.

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Hyman Wohl—For Plaintiffs—Direct.

Mr. Maguire: In the interest of accuracy—

Mr. Apfel: I think it is in the memorandum, a copy of that sign.

The Court: You had better have the record show it. When did this picketing start?

The Witness: 8 o'clock in the morning of January 23rd.

Mr. Apfel: There were two signs; one with the name of Hyman Wohl and the other sign with the name of Louis Platzman on top. The rest of the signs were the same.

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"The bakery route driver works seven days each week. We ask employment for a union relief man for one day. Help us spread employment and maintain union working hours and conditions. Bakery & Pastry Drivers and Helpers Local 802, I. B. T., affiliated with A. F. of L."

Q. How long were they picketing there? A. About two hours.

Q. Did you speak to Bernstein at the time? A. Well, just hello and—

The Court: Where did they picket?

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The Witness: They picketed in front of the bakery, of the Diamond Bakery, at 1467 St. Peters Avenue.

Q. When did you see Mr. Bernstein after that? A. I seen him on the morning of the 24th, around 5 o'clock in the morning.

Q. Where? A. Burnstein & Dickerman's Bakery, 1945 Daly Avenue.

Q. Was Mr. Bernstein alone at that time? A. No.

Q. Who else was with him? A. He had a party by the name of—well, I know the party; he had somebody with him, I don't—

Q. What is his name? A. Jack Marowitz, I think it is.

Q. Tell us what happened there on January 25th in Burnstein & Dickerman's bakery. A. Well, when I came in to receive my merchandise, the delegate, Mr. Bernstein, told the bakery owner, Mr. Burnstein, in my presence, that in case he gave me any merchandise out, he will picket his bakery. So Mr. Burnstein, the bakery owner, gave me my merchandise, I carried it out to my truck. While I was carrying it out he set a picket in front of the bakery at 5 o'clock in the morning.

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Q. Do you know how long that picket was there? A. I returned for my merchandise—for the rest of my merchandise at 6 o'clock in the morning, and the picket was not there any more.

By the Court.

Q. Who is Burnstein? A. Burnstein is the owner of the bakery at 1945 Daly Avenue.

Q. A man you were selling to? A. No, that is a man I was buying from.

Mr. Apfel: If your Honor please, there are two Bernsteins; one from whom he buys the other one is the delegate from the union.

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Q. You gave four stores from whom you were purchasing? A. Yes.

Q. Which one is that, Earnstein & Dickerman?

A. Burnstein & Dickerman.

The Court: I thought it was Earnstein; all right.

By Mr. Apfel.

Q. Did you see Mr. Bernstein on ~~that~~ day in their place? A. Well, no. I returned to the bakery of the Diamond Bakery, and found pickets there, too, on the 25th.

Q. On the 25th of January? A. Yes.

Q. Do you know how long they were there to picket? A. About two hours again.

By the Court.

227 Q. Are they still there? A. No, they are not there any longer; just those two days.

Q. In front of both bakeries two days? A. No, in front of one bakery on the 25th and in front of the Diamond Bakery two days, on the 23rd and the 25th of January.

Q. The Diamond Bakery they picketed on the 23rd and the 25th? A. Yes.

Q. The bakery of Bernstein & Dickerman, how many days? A. The morning of January 25th.

Mr. Maguire: May it be stipulated that the picket sign there used was the same one that has been read?

The Witness: The same sign.

Mr. Maguire: With Mr. Wohl's name on it.

Mr. Apfel: Yes. May we also stipulate that in accordance with the stipulation entered into before Mr. Justice McLaughlin, the matter was to remain in status quo until this trial?

The Court: What matter?

Mr. Apfel: This matter, there should be no picketing and nothing to be done.

Mr. Maguire: May I state it this way for the record: my friend made a motion for a temporary injunction before Justice McLaughlin, and at that time I stipulated that the pickets would be withdrawn and the matter remain in status quo until the disposition of the case on the trial, and that has been conformed to.

Mr. Apfel: That is right.

By Mr. Apfel.

Q. Did you see Mr. Bernstein in the Diamond Bakery on January 25th? A. No.

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Q. Have you seen Mr. Bernstein since that time? A. Yes.

Q. When did you see him the last time? A. The last time I met him about 6 o'clock in the morning about a week and a half ago.

The Court: You are speaking about what Bernstein now?

The Witness: The delegate.

Q. Do you know how much these union men get for a day's work? A. Well, they get—they are supposed to get \$9.

Q. And your approximate income per week is about \$32, is that right? A. Yes, less the \$5 I pay on the truck.

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Cross-examination by Mr. Maguire.

Q. Mr. Wohl, you say that you have been dealing with the Diamond Bakery for about two years?

A. Three years.

Q. And then it was about two years ago that you went to another bakery, is that it? A. No; at all times I deal with a few bakeries at one time.

Q. Now we will take any night that you can recall last week, Mr. Wohl. What time do you ordinarily leave your home to start your work? A. I leave the house exactly about ten minutes to five in the morning, or twenty to five in the morning.

Q. And where do you keep your truck? A. I keep my truck at Havemeyer and Westchester Avenue.

Q. A garage there? A. A gas station.

Q. Then where do you proceed from after you get your truck? A. I proceed to the Diamond Bakery Company.

Q. What time do you get there? A. Well, I get there 5 o'clock or so.

Q. It is only a matter of ten or fifteen minutes? A. It only takes me five minutes, ten minutes to get there.

Q. Then you pick up certain merchandise at the Diamond Bakery, is that it? A. Yes.

Q. Then do you go to some other bakery and pick up merchandise? A. I go to Burnstein's bakery.

Q. How far from the Diamond Bakery is the Burnstein Bakery? A. Five minutes driving.

Q. And normally what time do you get to Burnstein's Bakery? A. I get there ten after five, quarter after five.

Q. You say you leave your home ten minutes of five? A. Twenty to five, ten to five; on every day, sometimes ten minutes earlier or later.

Q. Did you serve your route to-day? A. Yes, sir.

Q. Going back to some date last week, how long does it take to load up at the Diamond Bakery? A. Five minutes.

Q. You don't have to check the merchandise? A. No; my orders are—I have got eight orders there waiting for me while I back in, pick up the eight orders and go away.

Q. In what sort of receptacle is your merchandise that you get from the Diamond, do they have it in a bag? A. No; they put them in boxes for me.

Q. After that you drive over to Burnstein? A. Yes.

Q. How long does it take you to load at Burnstein's? A. I only take three orders there and I go away. When I finish those orders I have got on—

Q. So out of the orders you have up to that point, you go out and serve, after you leave Burnstein—
A. That is right.

Q. How many customers do you serve? A. Altogether?

Q. In that time that you go out, after you leave Burnstein? A. Well, after I leave Burnstein, I got eleven customers to serve.

Q. Where are those customers located? A. They are located at Intervale Avenue, 156th Street, Union Avenue, Morrison Avenue, and those vicinities around there.

Q. And what time do you get back to Burnstein's place? A. About 6 o'clock.

Q. In other words, you leave Burnstein's bakery about ten minutes after or a quarter after five? A. That is right.

Q. You go out and make eleven deliveries? A. Yes.

Q. And you are back to Burnstein's bakery at 6 o'clock? A. Yes, sir.

Q. When you go back to Burnstein's bakery at 6 o'clock, what do you do then? A. I pick up twenty dozen rolls, or twenty-one dozen rolls, and I continue right on.

Q. Do you go to another bakery, or do you thereupon make deliveries? A. I deliver those twenty-one dozen rolls and that leaves me off right near the Diamond Bakery, and I pick up ten dozen rolls right there, and that is the finish of the morning trip.

Q. How many stops do you have to make with those rolls that you pick up from Burnstein's bakery? A. Well, I pick up three when I go over there the first time, then make about six after that.

Q. Then when you are completing these six, you are reasonably near the Diamond Bakery? A. That is right.

Q. And you stop in there and get some more merchandise? A. Yes.

Q. What time do you get to the Diamond Bakery? A. The Diamond Bakery, I get there about—oh, we will say about half-past six, twenty to seven.

Q. When you come back to Burnstein's and get the rolls? A. Yes.

Q. How many deliveries do you make before you hit the Diamond Bakery again? A. I make about six stops.

Q. What time is it you get back to the Diamond Bakery? A. Half-past six, twenty minutes to seven.

Q. Then what do you pick up at the Diamond Bakery? A. Ten dozen rolls.

Q. Then you go out and serve those? A. That is right.

Q. Or deliver those: how many stops do you make? A. About six stops.

Q. Then you say after you have made these six stops, you complete your morning route? A. Right.

Q. What time is it your normally complete your morning run? A. I complete my morning run at 7 o'clock in the morning.

Q. When do you start around again? What do you call your later run? A. My later run, I go out at quarter after eight in the morning.

Q. Then do you have merchandise to deliver on that trip? A. Yes.

Q. Where do you get your merchandise from? A. At the Diamond Baking Company.

Q. What normally is that merchandise? A. Well, bread and rolls.

Q. How many packages of bread and rolls do they give you this time? A. They give me about eight packages of orders.

Q. And how many deliveries do you make? A. Of the eight packages?

Q. Yes. A. I make about fourteen deliveries.

Q. Where are those deliveries made? A. You want to know the addresses?

Q. Yes. A. Well, my first stop is at Zerega and Westchester Avenues. My second stop is at 24 Westchester Square. My third stop is 28 Westchester Square. My fourth stop is Ericson Place and Appleton Avenue; my fifth stop is Appleton Avenue and Wilhelm; my sixth stop is Mayflower Avenue, and my next stop is Middletown Road, then I have got one at 3001 Westchester Avenue.

Q. Is that the last one, 3001 Westchester Avenue? A. Well, I have one that I collect after that, a restaurant, get four dozen rolls; that is the last.

Q. In what section of the Bronx is this 3001 Westchester Avenue? A. Pelham Bay.

Q. What section of the Bronx is the Diamond Bakery located in? A. Pelham Bay—well, two stations, three stations before Pelham, and they call it Westchester, and Pelham, together like.

Q. Normally then on this second group of deliveries you make, how long does that take you? A. Well, that takes me until 10 o'clock, half-past ten at the most, in case I am held up by some customers.

Q. Do you make any further deliveries in the course of the day? A. No; no more deliveries after that.

Q. After that you do make collections, do you not? A. No, I make my collections right in-between these stops, the stops I deliver.

Q. These stops you deliver to between 5 and 7 o'clock in the morning, these places of business are not open, most of them, are they? A. No. Maybe you will find four or five of them open, or so.

Q. How often do you collect from these customers? A. I collect every day.

Q. You say that of the substantial number you deliver before 7 o'clock in the morning, that only a few of those are open, isn't it necessary for you to go back then later in the day to all those stops to effect the collections? A. I do.

Q. And what time do you usually make the collections? A. I make my collections between the hours of eight and half-past ten, when I make my second deliveries.

Q. So that when you are making the second delivery, you go over the route that you have referred to, at the same time you go and retrace your steps to the other places? A. Right; that is right.

Q. Have you ever taken the actual mileage from the clock on the truck that you cover? A. I did.

Q. In the course of a complete set of deliveries?

A. I did.

Q. What is the mileage? A. The mileage runs from forty-five to fifty miles.

Q. And the total number of deliveries now that you make normally in a morning, what is that? A. There would be about forty stops.

Q. So you have about forty stops? A. That is right.

Q. For the making of deliveries, is that right?

A. That is right.

Q. You cover about forty-five miles? A. Yes, sir.

Q. And in addition to that you must come back to a good many of the stops for the purpose of making collections? A. That is all within the forty-five miles.

Q. I show you this paper, Mr. Wohl, and ask you if that is your signature? A. Yes, sir.

Mr. Maguire: I ask that it be marked for identification.

(The paper was marked Defendants's Exhibit A for Identification.)

Q. You say that one night in December, 1938, you went to Mr. Bernstein's home? A. Yes, sir.

Q. And how long did you stay at his home that night? A. Oh, about an hour.

Q. And in that time you talked with Mr. Bernstein? A. Yes.

Q. And his wife was there in the apartment, did you see her? A. She was in the apartment, yes.

Q. Do you make any provision, Mr. Wohl, for a special delivery service, that is, in the event a customer runs short of merchandise? A. No, sir.

Q. And calls up? A. Once I ain't there, they cannot get nothing.

Q. That is after you complete your second trip?

A. I go home.

Q. Do you go back to the Diamond Bakery after you— A. Well, I do, I bring up some of my empty boxes, to be ready for the morning.

Q. And the stale that you have picked up? A. I throw that away.

Q. That is on this last trip you pick up your stale? A. I don't pick it up every day, unless somebody hands me certain bread. I pick it up on Monday and Friday.

Q. What do you do with the stale? A. I throw it away.

251 Q. In a week will you tell us approximately how much stale merchandise is returned to you? A. I have about eight or nine dollars, approximately.

The Court: How much?

The Witness: Eight or nine dollars of stale.

Q. Of course, financing this automobile that you bought in December last, it was required that fire and theft insurance be taken out on it, wasn't it? A. Yes.

252 Q. Other than that fire and theft insurance, is there any other insurance on the truck? A. Collision, \$50 deducted. The finance does that.

Q. And public liability or property damage insurance? A. No.

Q. In the time that you owned the truck, not only this but the other one, did you ever carry any liability insurance? A. No, sir.

Q. Or property damage insurance? A. No, sir.

Q. Now, Mr. Wohl, you are not under any arrangement with any of these bakeries or otherwise in regard to workmen's compensation, are you? A. Well, I am my own boss.

Q. But you have no arrangements with these bakeries— A. No.

Q. Or anywhere else, whereby you are covered by workmen's compensation insurance? A. No, sir.

Q. Similarly, you have no coverage for unemployment insurance or Social Security, have you? A. No.

Q. When you were negotiating for the purchase of this truck in December last, you furnished to the company, the finance company, certain information, did you not? A. Yes, sir.

Q. And you gave as one company that you did business with, the Modern Bake Shop? A. Yes, sir.

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Q. And also Dickerman? A. No; the Modern Bake Shop is Burnstein & Dickerman.

Q. And you referred to them? A. Yes.

Q. How much worth of merchandise do you buy per-day from all of these bakeries you deal with?

A. About \$25-a day.

Q. That is the merchandise? A. Yes.

Q. And that is the average you were buying in December last, is that it? A. Yes.

Q. As a matter of fact, did not you tell the finance company that your average purchases were \$35 a day? Did you or did you not? A. I suppose I did, if it is—but it is only \$25 a day.

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Q. So that when you made this statement to the finance company with reference to business you were making a misstatement? A. Well, I only make \$25 a day.

Q. But you did tell them, of course, that you purchased \$35 worth of merchandise, did you not?

A. I don't remember.

Q. Mr. Wohl, isn't it a fact that you told them that? A. I did not talk to them even; how could I ever tell them?

Q. You did not talk— A. To no finance company; I talked to the party who I bought the car from.

Q. That is right, and they made notes of the information that you gave them? A. Yes, sir.

Q. And you are Hyman Wohl? A. Yes.

Q. Of 1115 Westchester Avenue, and the previous address was 815 Allerton Avenue? A. Yes.

257 Q. You gave that information to these people when you were buying the truck, is that right? A. Yes, but buying an automobile, all I can—

Q. Did you give that information? A. I gave them some information.

Q. Did not you tell them you purchased \$35 of merchandise? A. I did not.

Q. You are positive about that? A. I don't know, I don't remember this. The fellows, they add to it, that they should sell the truck; in order to sell it they add to it all the time.

Q. Did you or did you not tell them you purchased \$35 a day? A. I don't remember if I did or not.

258 Q. Didn't you tell them your income per month was \$240, your net income? A. I did not. I told them less than that. They added to that.

Q. What did you tell them was your net income? A. Well, I must have told them—

Q. What did you tell them, not what you must have told them? A. \$40 a week, to advance, that I can have the truck.

Q. Mr. Wohl, you have outlined to us the routes that you cover when you call for your merchandise, and so on? A. Yes, sir.

Q. Will you tell us whether or not normally you make purchases from Wopner, who was mentioned by you? A. I do.

Q. And his place is at Belmont Avenue and East 180th Street? A. He delivers the merchandise to me to the Diamond Bakery during the night.

Q. And it is there when you get through on your first trip? A. Right.

Q. What about Pyrex? A. Pyrex, after I pick up my ten dozen rolls, which I do collecting, pick up my nine dozen buns.

Q. From Pyrex? A. Yes.

Q. How far is it from Burnstine's bakery place to Pyrex? A. I go from the Diamond Bakery to there.

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Q. Then you go on with these other stops? A. It is right by the Diamond Bakery.

Q. Do you keep a route book? A. No.

Q. With the names of all your customers in? A. No.

Q. You don't keep any account of your sales? A. No; I don't have to.

Q. I did not ask you if you had to. Haven't you any list showing the names and addresses of your customers? A. No, sir.

Q. And no book showing that information? A. No, sir.

Q. Do you submit to your customers at any time written statements showing how much you deliver there? A. No; every day I give out a slip.

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Q. Have you a form of that slip with you? A. Yes.

Q. May I see it, please? A. (Slip shown.)

Q. When you fill this slip out do you put the name of the customer on there? A. Put the name of the customer on, yes.

Q. Do you keep a duplicate copy of this? A. No, sir.

Q. Don't some of the customers run their accounts for a few days or possibly a week? A. Well, I give them a slip and they pay me and I go away.

Q. I mean for two or three days, then you just get all the slips in and tear them up? A. I have not got two or three slips; every day I give them a slip and I get paid and I go away.

Q. Do you live at 740 Caldwell Avenue? A. Yes.

Q. Mr. Wohl, what is your wife's name? A. My wife, Mollie, she was; she is dead now.

Q. When did Mrs. Wohl die, what year was it? A. Last year.

Q. Who is Sarah Wohl? A. My mother.

Q. This automobile that you used prior to the one that you bought in December last, that was a Chevrolet? A. Yes.

Q. And that truck was registered in the name of your mother in the year 1937, was it not? A. Yes.

Q. Had it been registered in your mother's name prior to that time? A. You mean after that?

Q. No, before that. A. Before it was on my wife's name.

Q. So that for how many years prior to December, 1938, was the truck that you used in connection with your business held in the name of your wife or mother? A. Three years before that. Two years, I think, it was on my mother's and one on—I mean two years on my wife's and one on my mother's, and the rest on myself.

Q. Will you tell us this, Mr. Wohl: why in the three years had the truck that you used in connection with your business been registered in your wife's and your mother's names? A. Well, honestly, to tell you, I was afraid to keep it on my own name.

Q. Well, I mean, had you had accidents and been sued? A. No, I never had an accident. I was sued once by a landlord, that is all.

Q. Was it so that if you were sued by anyone that was injured by this truck, that you yourself might not be responsible?

—Mr. Apfel: I object to it; that is immaterial, a mere supposition.

The Court: Objection overruled.

Q. Isn't that the reason? A. What is that?

Q. Was it the fact that you put the truck in the name of your wife, then your mother, in order—

A. No.

Q. (Continuing) —to avoid responsibility in case of an accident? A. Well, no; I always kept—I kept it on my wife's name, she was my wife.

By the Court.

Q. Did you have the truck insured? A. No; the truck was only, a short while, I was paying the notes on it.

Q. Have you got your present truck insured? A. While I am paying notes it is insured.

Q. By the company? A. The company pays it, \$50 deducted.

By Mr. Maguire.

Q. That is only fire, theft and collision damage? A. Yes.

Q. That is damage to the truck itself? A. Yes.

Q. You have no public liability or property damage insurance? A. No.

Q. I think it was in the spring of 1938 that you started to use a man by the name of Greenberg as a

relief man on your route. A. Not a man named Greenberg.

Q. Was the name Greenstein? A. No; Louis Rubin.

Q. This Louis Rubin worked as a relief man, that is, worked one day a week, for how long a period?

A. He worked about ten weeks for me, about three hours on Sunday morning, it took him to finish my route.

Q. But in any event you did not go out on Sunday mornings? A. No, sir.

Q. He went out? A. Well, the union made me take him.

Mr. Maguire: I move to strike that out.

The Court: Motion granted.

Q. Prior to the time you used that man on your route, did you have a conversation with Mr. Leibowitz or Mr. Kasper? A. While he was working for me?

Q. No, before that, a conversation before you hired this fellow Rubin and used him for the ten weeks, did you have a talk with Leibowitz and Kasper? A. About what?

Q. Concerning putting a man on the truck. A. Everything was my own business, I put him on—

Q. Do you recall this, that prior to the spring of 1938, there was a route, a house route we will call it, out of the Diamond Bakery? A. Yes.

Q. And there was employed on that route a regular union man, is that right? A. No, sir; no, sir.

Q. Who prior to the spring of 1938 operated the house route of the Diamond Bakery? A. A party by the name of Isidor—but I don't know the second name. He still operates it. It is his own business.

Q. Is not Kasper one of the members of the firm there? A. Yes.

Q. And Leibowitz? A. Yes.

Q. Does not Kasper at the present time operate that house route? A. No, sir.

Q. For a number of days a week? A. Oh, no, sir.

Q. Who does? A. A party, Isidor—I forget, I can find out the second name.

Q. How many routes operate from the Diamond Bakery, whether it be peddlers or house route? A. As much as I know, there is one house route and two peddlers.

Q. Who operates the house route now? A. A party named Isidor. He goes around with "Sun Ray" Bakery on it; he has got the house route. He has got nothing to do with Kasper.

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By the Court.

Q. What do you mean by house route? A. He delivers two or three rolls in front of the door, just like Borden's milk men do.

Q. The house route is where the employee of the Diamond Bakery— A. No, he owns the route, this party by the name of Isidor; he buys his merchandise from the Diamond Bakery.

Q. You mean to say he is the same sort— A. That is right.

Q. But you call it house route? A. Well, I serve the grocery stores; he serves private customers.

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Q. That is what you mean by house route, is that it? A. Private customers is a house route.

By Mr. Maguire.

Q. Isn't that a route which is operated by either a member of the firm of the Diamond Bakery, or by a paid chauffeur or driver? A. No, sir.

274 *Hyman Wohl—For Plaintiff—Redirect—Recross.*

Q. Not that you know of? A. I have been there three years I ought to know.

Redirect examination by Mr. Apfel.

Q. You had a man named Louis Rubin about ten weeks? A. Yes.

Q. And let him go after ten weeks? A. Yes.

Q. Did you have a conversation with Bernstein at that time? A. When I let him go, yes.

By the Court.

275 Q. When did you employ him, what month? A. I employed him at the beginning of the summer, about June, or the middle of May.

Q. Last June? A. Yes.

Q. Ten weeks? A. Ten or eleven.

By Mr. Apfel.

Q. Why did you let him go? A. I was falling behind in my bills, I could not pay my bills and pay the amount of money I laid out, so I went down to the office and told the delegate I could not keep that man.

Q. Whom did you speak to? A. Mr. Hyman Bernstein.

276 Q. After that you let him go? A. He says he would take him off, and he did take him off.

Q. You heard nothing from the case? A. I heard nothing from them until December.

Recross-examination by Mr. Maguire.

Q. There is a G.M.C. truck that operates out of that Diamond Bakery, is there not? A. No; it just stands there.

Q. But you say it is not used? A. They use it maybe once a week or so.

Q. And you know that particular truck is not used to serve any route? A. No, it don't serve any route at all.

Q. Just stands around there? A. That is all.

Q. When they use it once a week, as you say, do you know what they use it for? A. I don't know what they use it for, it is none of my business; but I see them go away once in a while, but they don't use it for no route.

Q. Whom have you seen driving it? A. I have seen the electrician take it—you cannot check it up—go for some place. If anybody breaks down they take the truck.

Q. What is your business address? A. I have got on my business address, 1467 St. Peters Avenue.

Q. That is the place of business of the Diamond? A. I can make it 1945 Daly Avenue.

Q. All the places for your— A. Wherever I pick up my merchandise; I can mark any one of them.

Q. I did not say you could not, but you did designate 1467 St. Peters Avenue? A. I do, to show them where you have merchandise from.

(RECESS UNTIL 2 O'CLOCK.)

AFTERNOON SESSION.

MARTIN BUCKNER, 26 East 200th Street, Bronx, New York City, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

Direct examination by Mr. Apfel:

Q. Mr. Buckner, what is your business or occupation? A. I am salesman for the Standard Milling Company.

281 Q. Are you in any way connected with the plaintiffs in this action—I mean, do you sell them any merchandise? A. The Diamond Bakery?

Q. To Platzman and Wohl? A. No, sir.

Q. Were you in the Diamond Baking Company on the 16th day of December, 1938? A. Well, it was—it was about a week before Christmas. It was on a Friday.

8 Q. Will you tell us what you saw and what you heard over there at that time? A. When I came in I asked for Mr. Leibowitz and Mr. Kasper. They told me there was some gentleman in the room talking to them, so I sat down in the store; they had a store in front of the bakery. I was waiting; as I sat there—well, I don't know the names of
282 these gentlemen——

Q. Is he one of the gentlemen that was on the stand here this morning? A. The first fellow.

Q. Bernstein? A. Mr. Bernstein, he came in with, I don't know, four or five gentlemen. As he came in they went to the back, and they came out with about four or five more. There must have been probably about ten of them. I heard them talking about putting on some drivers on

some trucks. They were disputing about taking these drivers' places, or something along that line.

Q. Did you go in the back? A. I did not go in the back. This happened in the street as they came out. They were talking about going out right away and picketing the place.

Q. You heard Mr. Bernstein make remarks about picketing and putting somebody on? A. Yes; all these men were talking about that, and this gentleman that was a witness here.

Q. Mr. Bernstein? A. No—

Q. Mr. Wohl? A. Mr. Wohl, this gentleman, and another fellow was there.

Q. And you heard Mr. Bernstein always in the place where you were? A. They were right near me. I was sitting on a chair right in the hall.

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Cross-examination by Mr. Maguire.

Q. Approximately how many feet away were you from Mr. Bernstein when you heard that statement? A. I would not say that; they were right alongside of me.

Q. Then you heard people saying something, they went out of the store? A. I did not go out.

Q. They went out of the store? A. Well, the discussion was—

Q. After you heard them say something did they thereupon leave the store? A. After they decided—the way I got it, they were going to picket right away.

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Q. Please— A. Yes, naturally, when they got through, they went away after a while.

Q. You stayed on and conducted your business? A. That is right.

286 *Martin Buckner—For Plaintiffs—Cross—Redirect.*

Max Bernstein—For Plaintiffs—Direct.

Q. How long were you waiting in the store? A. While I was there?

Q. Yes, before these men left? A. Well, I should say about a half hour; it was between ten and eleven, some time around that time.

Q. The only time you heard anything they said was when they were right close up to you? A. That is right.

Redirect examination by Mr. Apfel.

287 Q. Were you always sitting there right close to them? A. Oh, yes, I was there, I stayed right there. They were coming out of the bakery, coming into the store.

Q. How long were they in the bakery, do you know? A. Well, the first people, I don't know; but this Mr. Bernstein and four or five men that came in with him, they were probably there maybe ten minutes or fifteen minutes, something like that. They were disputing about this picketing business.

288 MAX BERNSTEIN, 2084 Honeywell Avenue, Bronx, New York City, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

Direct examination by Mr. Apfel.

Q. Mr. Bernstein, are you one of the owners of the Bernstein & Dickerman Bakery? A. Yes, sir.

Q. You do business with Mr. Wohl? A. Yes.

Q. Do you sell him merchandise? A. Yes, sir.

Q. And he pays you for it, is that right? A. Yes.

Q. You have absolutely no other connection with him? A. No, sir.

Q. Do you remember the 25th day of January, 1939? A. Yes.

Q. Do you remember Mr. Hyman Bernstein coming into your place? A. Yes.

Q. Was Mr. Wohl present? A. Mr. Wohl just walked in then.

Q. Will you tell us what Mr. Bernstein said and what you said and what Mr. Wohl said at that time? A. Mr. Bernstein said that he is going to picket my place of business if I give Wohl merchandise out. 290

Q. Did they picket your place of business? A. They did.

Q. For how long? A. For a short while.

Q. You gave Mr. Wohl merchandise? A. Yes.

Cross-examination by Mr. Maguire:

Q. Are you still furnishing Mr. Wohl his merchandise? A. Yes.

Q. You continued to furnish him with merchandise during the time the picketing was going on? A. Yes.

Q. Have you a contract, or your company, has it a contract with Local 802? 291

Mr. Apfel: I object to that. It is immaterial whether his firm has any contract with a labor union.

The Court: Objection overruled.

Mr. Apfel: Exception.

Q. Have you, Mr. Bernstein? A. No, sir.

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Max Bernstein—For Plaintiffs—Cross.

Q. You have not? A. No.

Q. Does your company operate any routes? A. Yes.

Q. How many? A. One.

Q. How long has it been operating that route? A. About a year.

Q. Who is the driver on that route? A. My partner.

Q. Your partner's name is Dickerman? A. That is right.

Q. Is Mr. Dickerman a member of Local 802? A. Yes.

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Q. Are you a member of Local 802? A. No.

Q. Mr. Dickerman in operating that route, how many days a week does he work? A. He works six days.

Q. Then on the seventh day he has a relief man, is that right? A. Yes.

Mr. Apfel: I object to the entire line of examination.

The Court: Objection overruled.

Mr. Apfel: Exception.

Q. How long has your firm been operating this route? A. For one year.

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Q. Throughout that entire time has Mr. Dickerman worked six days a week? A. That is right.

Q. And had a relief man for the seventh day? A. Yes.

Q. And the relief man is also a member of Local 802? A. Yes.

Mr. Maguire: May I interrupt for a moment? I caused a subpoena duces tecum to be served on the Diamond Bakery yesterday calling for the production of certain books

*Max Bernstein—For Plaintiffs—Cross.
Louis Platzman—For Plaintiffs—Direct.*

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and records. In the interest of saving time may I have those made available to me now, so that while these witnesses are testifying, I can check them?

Mr. Apfel: If your Honor please, I do not think they have any right to look at those books.

The Court: I do not think you have any right to look at them until you offer them in evidence.

Mr. Maguire: I propose to offer some of them in evidence.

The Court: You may call for them during the trial, then offer such parts as you think necessary to be introduced.

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LOUIS PLATZMAN, 1988 Newbold Avenue, Bronx, New York City, one of the plaintiffs, called as a witness in his own behalf, being first duly sworn, testified as follows:

Direct examination by Mr. Apfel.

Q. You are the other plaintiff in this action? A. I am.

Q. What is your business or occupation? A. I am a peddler.

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Q. How long have you been a peddler? A. Two years.

Q. When you say peddler, you mean you buy certain merchandise from bakeries and resell it?

A. That is right.

Q. What route do you operate? A. My own.

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Louis Platzman—For Plaintiffs—Direct.

Q. From whom do you buy the merchandise? A. I buy from the Diamond Bakery and the Pelham Baking Company.

Q. How long have you been in this business, did you say? A. Two years.

Q. During that two-year period, from whom did you purchase—from those two bakeries only? A. That is right.

Q. Do you have a family? A. Expecting.

Q. You are married? A. Yes, sir.

Q. Do you have a truck? A. I do.

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Q. Did you purchase that truck yourself? A. That is right.

Q. In whose name is that truck? A. In my wife's name.

Q. Ever since you started operating as a peddler you owned the truck? A. That is right.

Q. I show you some sales agreements dated October 18, 1937, and ask you whether that was in reference to your first truck that you owned? A. That is right; this is the first truck I bought.

Q. You bought that with your own money? A. That is right.

Mr. Apfel: I offer those papers in evidence.

300

Mr. Maguire: When the truck was taken, on whose name was it placed, his wife's?

Mr. Apfel: The truck was purchased in both names, but the ownership card is on his wife's name. In order to save some time, Mr. Maguire, I have here an order dated January, 1938, where he exchanged this truck for another one which he now operates.

The Witness: In June.

Mr. Maguire: Under what name is the truck carried now, the same?

Louis Platzman—For Plaintiffs—Direct.

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Mr. Apfel: The same man.

Mr. Maguire: In his wife's name?

Mr. Apfel: In his wife's name, and purchased in both names.

Mr. Maguire: Both of them obligated themselves on the financial papers, but the title was put in his wife's name.

Mr. Apfel: That is right. Have you any objection to this one?

(The papers were received in evidence and marked Plaintiffs' Exhibits 2 and 3.)

Q. Have you any contract or agreement with either the Diamond Baking Company or the Pelham Baking Company that you have to purchase merchandise from them only? A. No, sir.

Q. And you are at liberty at any time to change the place where you buy merchandise from? A. I am.

Q. What is your approximate weekly income? A. Anywhere between thirty and thirty-five dollars.

Q. From that amount you make you have to—
A. Have to pay for garage and notes.

Q. You pay your garage bills? A. Yes.

Q. I show you some bills; do these represent your garage bills? A. They do.

Mr. Apfel: I offer them in evidence.

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Mr. Maguire: Objected to as immaterial and irrelevant.

The Court: To reduce his income; I will overrule the objection.

Mr. Maguire: Exception.

(The papers were received in evidence and marked Plaintiffs' Exhibit 4.)

Q. Your weekly income varies, doesn't it? A. That is right.

Q. Between thirty and thirty-five dollars a week?

A. Yes.

Q. Are you also required to take back stale bread and rolls? A. I am.

Q. How much does that amount to a week? A. Anywhere between twelve and fifteen dollars.

Q. How many hours a week do you work? A. About sixty-five.

By the Court.

Q. That reduces your income, taking back stale bread, doesn't it? When you say thirty or thirty-five dollars a week as your income, did you mean that was your net income after taking into account these other deductions? A. Yes, it does.

Q. You took into account these other deductions? A. Yes.

By Mr. Apfel.

Q. Do you know Mr. Hyman Bernstein? A. I do.

Q. Did you see him in the month of December? A. I did.

306 Q. When and where? A. I saw him on Thursday morning, December 15th.

Q. Where did you see him? A. In front of the Diamond Bakery.

Q. Did you have a conversation with him? A. When I came in—when I pulled over to the bakery I saw a few members of the union standing on the outside. When I went inside I saw Hyman Bernstein and another member or two standing there with him. He came over to me, he told me

he was sending me a man on the following day, Friday, to work for me. That particular day I happened to come in late. I told him I could not talk to him right then, if he would be good enough to come back about 6.30 or 7 o'clock I would talk to him. He said there was nothing to talk about, he was sending a man in, I will take him on. I told him if he did it would be a foolish thing, he would only waste his time. He started holding my truck. Then I pulled out.

The Court: What day was that?

The Witness: December 15th, Thursday morning.

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Q. When did you see him the next time? A. The next time I saw him in the bakery, in back of the bakery, on Friday.

Q. The following day? A. That is right.

Q. What was the conversation you had there with him? A. When he came into the bakery he came over to me, asked me why I did not let the man work. I told him, "I told you the day before I would not let him work because I could not afford it." He told me that man would be paid for that day, regardless of whether I let the man work or not, and that I would take a man on every week and pay him for it. I told him I could not afford it and I could not pay it. He told me, "If you cannot afford it, you should put your truck in storage and pack up your business." Well, we argued back and forth. I told him I would not starve to pay a man \$9. He answered me back he did not care whether I starved or not, that \$9 had to be paid. Then he spoke to Mr. Leibowitz, the proprietor of the Diamond Bakery, and told him that he is holding him personally responsible,

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Louis Platzman—For Plaintiffs—Direct.

that in the event he baked for me the following time, he would have to pay for every one of the days I would not pay a man for. After that he turned to Mr. Wohl and told him; "The same goes for you, too."

Q. Did he ask any members of the union to go out and take up some signs? A. After speaking a while he turned to two of his members and told them to go to the back of his car and take out signs, and follow me, and go into each and every stop I deliver merchandise to, and tell them to stop taking merchandise from me or else they would picket the store.

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Q. How long did this conversation, and this episode you just described take, approximately? A. You mean between Bernstein and myself?

Q. Yes, the whole thing; how long was Bernstein in the place? A. He must have been there every bit of a half or three-quarters of an hour.

Q. When did you see Mr. Bernstein after that? A. I saw Mr. Bernstein—

Q. Mr. Hyman Bernstein, did you see him on the 23rd of January? A. No, I did not see him then.

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Q. Did you see pickets in front of the place of the Diamond Baking Company? A. Yes, on January 23rd when I came back to the bakery I saw there were two pickets walking up and back in front of the bakery. One was carrying the name of Hyman Wohl, the other the name of Louis Platzman.

Q. Did you see Mr. Bernstein on the 25th of January? A. No, I did not.

Q. Were they picketing that day? A. Yes, they were.

Q. Did any member of this union follow you on your trip while you were making deliveries? A.

Yes; about four members followed me up in a private car to about eight or nine stops.

Q. Will you tell us whether they stopped off at any one of these places? A. They did.

Q. Will you tell us the first place they stopped?
A. On 134th Street and Longfellow Avenue.

Q. What is the name of the party? A. Ginsberg.

Q. Did they go into that place? A. They did.

Q. Were you present when they went in? A. Yes.

Q. Did you hear what they said to this party?

A. Yes.

Q. What did they say?

Mr. Maguire: Unless there is ~~some~~ identification I will object to it.

The Court: Yes; you will have to connect it.

Q. Who are these men, do you know them? A. I know one by the first name of Jack.

Q. Do you know the rest of them? A. I think I saw one sitting here before.

Q. Is this party, Jack, a member of this union?

A. He is.

Q. What did they say to this party, Ginsberg?

Mr. Maguire: Objected to.

The Court: I don't think you have identified these men at all. His saying the name is Jack does not mean a thing.

Q. Do you know his second name? A. I don't know.

Q. Did you ever see these men with Bernstein before? A. I did.

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Louis Platzman—For Plaintiffs—Direct.

Q. Did you see them on the 16th of December or the 15th of December? A. I believe he was with him, yes.

Q. Are these the men that walked in with Bernstein that day? A. One of them was, yes.

Mr. Maguire: I object to counsel putting words in the witness' mouth.

The Court: Objection sustained.

Q. Do you see any one of these men in the court room to-day? A. He is one of them, Ruby (pointing).

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Mr. Apfel: Ruby, please stand up.
(A man stands.)

Q. Is that one of them? A. Yes.

(The man, when asked, stated his name is Philip Rubin.)

Mr. Apfel: Will you concede he is a member of the union, Mr. Maguire?

The Court: He is a member of the union, yes.

Q. Anybody else you recognize over here? A. No.

318

Q. Were these other members together with Rubin there in Ginsberg's place? A. Yes.

Q. Who was doing the talking? A. That particular one that was doing the talking—Rubin is one of them that went into one of the stores.

Q. Which one did he go into? A. Ginsberg's.

Q. Did he do any talking there? A. He did.

Q. What did he say?

Mr. Maguire: Objected to as immaterial, irrelevant and incompetent.

The Court: Who is this man—Rubin, you say?

The Witness: Yes, Rubin is the one that spoke to the grocery man, the owner of the store.

The Court: I overrule the objection.

Mr. Maguire: Exception.

Q. What did he say? A. He told him that I was not a union man, and that if they accept merchandise from me the following day they would picket the store.

Q. Did these men also go to different places? A. They did.

320

Q. What other places? A. They went to a place on 172nd Street.

Q. Was Mr. Rubin there with them? A. He was.

Q. He was one of the four that went in there?

A. No; two others went in.

Q. Was Mr. Rubin in there? A. No, he did not go into that store.

Q. Did he go into any other place—Mr. Rubin?

A. No, that is the only store he went.

Q. Was that the only day you were followed?

A. Yes.

Q. On the 16th of December who was present at the time Bernstein came in? A. There was Mr. Wohl, myself, Mr. Leibowitz, there was an electrician, Abie Appelbaum; there was about eight or nine members of the union, Mr. Bernstein himself.

321

Mr. Maguire: I move to strike out eight or nine members of the union; there is no proof of that.

The Court: I will strike that out.

322 *Louis Platzman—For Plaintiffs—Direct—Cross.*

Q. How many men walked in with Mr. Bernstein? A. Four men.

Q. Do you employ anyone at the present time? A. I do not.

Q. Were you ever employed by the Diamond Baking Company? A. No, sir.

Q. Are you employed by them now? A. No, sir.

Q. Have you any connection with the business? A. None whatsoever.

Q. Or the other bakery that you do business with? A. I have no connection with any bakeries.

Cross-examination by Mr. Maguire.

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Q. Mr. Platzman, you say that on the morning or the evening of December 15th you saw Mr. Bernstein. Which was it, morning or evening? A. Morning.

Q. At about what time? A. About 5 o'clock.

Q. In the morning? A. That is right.

Q. And you told him that you had to go out on your route? A. That is right.

Q. And that if he wanted to see you, you would see him about what time, did you suggest? A. About 6.30 or 7 o'clock.

Q. That night? A. No, that morning.

324 Q. Ordinarily what time do you go to the Diamond Bakery to pick up your products? A. About 4.30.

Q. What time do you usually get finished in the day? A. My first trip I get through about 6.30.

Q. I know, but your second trip, and your collections and all? A. You mean my complete day?

Q. Yes. A. About 2.30.

Q. Does that include your collections, too? A. Yes.

Q. How many stops do you make in the course of your first or second trips? A. Pardon?

Q. I mean how many deliveries do you make in a day, normally? A. How many deliveries I make to each in that stop?

Q. Yes. A. Sometimes I make one only, sometimes I make two.

Q. No, but to how many groceries or delicatessen stores or any kind of places do you make deliveries?

A. About twenty-six.

Q. That is your entire route? A. That is right.

Q. Approximately how much merchandise do you buy each day? A. How much rolls do I buy?

Q. Pardon? A. Is that what you asked, how many rolls a day, or bread?

Q. The total, the aggregate of merchandise you buy each day? A. In money?

Q. Yes. A. Anywheres between \$25, 28, \$30.

Q. You have been working seven days a week? A. I have.

Q. You say you have been peddling for approximately two years; prior to that time what did you do? A. I worked on various jobs.

Q. Well, there was the job that you held just before you became a peddler? A. I worked for the Security Food Products.

Q. Was that a baking concern? A. No, sir.

Q. How long did you hold that job? A. About four months.

Q. Prior to holding the job with the Security Food Products, whom did you work for?

Mr. Apfel: I object to it as immaterial, who he worked for.

The Court: Objection overruled.

Mr. Apfel: Exception.

A. I worked for the Rubin Sales Company.

Q. Did you, within a year or two before you became a peddler, work for any other baking store?

A. I did.

Q. What company was it? A. The Grand Bakery.

Q. Where was the Grand Bakery located? A. On Grand Avenue near Fordham Road.

Q. For how long did you work for that company? A. A little more than a year.

Q. At that time you were a driver on a retail route? A. I was.

329 Q. At that time you were a member of Local 138? A. 138.

Q. Of the International Brotherhood of Teamsters? A. That is right.

Q. You know, of course, that at that time Local 138 did have the bakery-drivers' jurisdiction, and since that time it has been turned over to Local 802? A. Yes.

Q. What happened to your membership in the union? A. Well—

Q. Just discontinued paying dues? A. No, I did not. It happened that I left my job with the Grand Bakery because my employer and I did not get along. I went after the delegate for a job then. I even as much as kept on paying dues after that.

330 Q. For how long after you lost the job or you resigned, or whatever it was, from this bakery, did you continue to pay dues as a member of the union? A. About two months.

Q. Then you discontinued paying dues? A. That is right.

Q. You have not paid any dues since? A. No, sir.

Q. Have you ever been brought up on trial or on charges within the union? A. No, sir.

Q. Either Local 138 or Local 802? A. No, sir.

Q. Have you your old membership book in Local 138? A. No, I have not.

Q. Who were the officials of this Diamond Bakery Company? A. Who are the officials?

Q. Yes; I understand Mr. Leibowitz is one official, one officer, is he not? A. I think so.

Q. Then there is another officer, Kasper, is it not? A. I think so.

Q. That is J. Kasper? A. Yes.

Q. Do you know what office J. Kasper holds in the Diamond Bakery? A. No, sir.

Q. He is a brother-in-law of yourself, is he not? A. He is.

Q. The manner in which you conduct your business, Mr. Platzman, do you permit credits to anyone on your routes? A. Credits, such as what?

Q. Well, in other words, you make a delivery this morning, do you go back the same day and make your collection, or do you let it run for a couple of days? A. No; I go back the same day and collect it.

Q. So that all your accounts are paid practically C.O.D., or from day to day? A. That is right, sir.

Q. Do you have any route book which contains the names and addresses of customers that you serve? A. No, sir.

Q. Do you have any list whatsoever showing the names and addresses of the customers you serve? A. No.

Q. In the two years that you have been acting as a peddler, working as a peddler, have you worked constantly seven days a week? A. No, sir.

Q. What period of time didn't you work seven days a week? A. Well, when I first started my route, I picked up a little route, and those particular customers were not open on Sundays, I used

to deliver only six days. I was doing that for about a year.

Q. But in the past year you have been required to work seven days? A. Not quite a year.

Q. Well, approximately, we will say eight or ten months, is that it? A. Well—

Q. You purchased a truck, I see, in 1937? A. That is right.

Q. Of course, the truck being financed, you did carry fire and theft insurance on it? A. Yes.

Q. Until the payment was made? A. That is right.

Q. During that time did you not carry liability or property damage insurance, did you? A. No, sir.

Q. And at any time since you have been a peddler have you carried liability or property damage insurance on the trucks that you owned?

Mr. Apfel: Objected to as immaterial.

The Court: Overruled; it is cross-examination.

Mr. Apfel: Exception.

A. No, sir.

Q. Have you in that period of time had any accidents? A. No, sir.

Q. In all the time that you have owned trucks you have always kept them in your wife's name? A. That is right.

Q. Where is this Pelham Baking Company located? A. On Morrison Avenue.

Q. Do you know the address? A. I think it is 1260.

Q. Who is the proprietor of that company, or that concern? A. I don't even know his name.

Q. How long have you been dealing with him?

A. About a year and a half.

Q. Do you pay him cash? A. I do.

Q. Do you pay the Diamond Bakery cash? A. I do.

Q. By the day? A. Yes.

Q. You don't owe them from day to day any sums whatsoever? A. No, sir.

Q. What do you do with your stale? A. I throw it away.

Q. You say you have stale of twelve to fifteen dollars a week? A. That is right.

Q. Just throw it away? A. That is right.

Q. Have you, through any arrangement with the Diamond Bakery or the Pelham Baking Company, any arrangement to be covered by workmen's compensation insurance? A. None whatsoever.

Q. During the two years you have been a peddler you have never been covered by any workmen's compensation insurance? A. That is right.

Q. Does that apply equally to Social Security or unemployment insurance? A. Yes.

Redirect examination by Mr. Apfel.

Q. You testified that you paid dues for two months after you left the Grand Bakery? A. Yes.

Q. Will you tell us why you stopped paying dues to Local 138? 339

Mr. Maguire: Objected to as immaterial.

The Court: You brought it out; objection overruled, exception.

A. At that time there was another delegate by the name of Morris Schor. Every time I would meet him I asked him about getting me some work;

340 *Louis Platzman—For Plffs—Redirect—Recross.*
Abe Appelbaum—For Plaintiffs—Direct.

he was always promising me, I never got that. Afterwards I had to make a living somehow, I was married at the time, I had to go out to get a job. I went to take any kind of job I could get.

Recross-examination by Mr. Maguire.

Q. I show you this paper, and ask you if that is your signature? A. Yes, it is.

Mr. Maguire: I ask that it be marked for identification.

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(The paper was marked Defendants' Exhibit B for Identification.)

ABE APPELBAUM, 1210 Stratford Avenue, Bronx, New York City, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

Direct examination by Mr. Apfel.

Q. Mr. Appelbaum, what is your business or occupation? A. Electrician.

Q. Are you in any way connected with Wohl and Platzman? A. No, I am not.

Q. Did you do any work for them at any time? A. I did not.

Q. Were you on the 16th day of December, 1938, in the premises of the Diamond Baking Company at 1467 St. Peters Avenue? A. I was.

Q. Did you on that day see Hyman Bernstein? A. I did.

~~Mr. Maguire:~~ If it will save any time I will concede this witness if he testified would confirm Mr. Buckner.

Mr. Apfel: And he will corroborate the plaintiffs as to what happened on the 16th of December?

Mr. Maguire: I see a very material dispute between Buckner's and the plaintiffs' testimony, but I am willing to concede he will confirm or corroborate Mr. Buckner's testimony.

Q. Did you see Hyman Bernstein there that day?

A. I did.

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Q. How long was Hyman Bernstein there that day? A. Approximately, about three-quarters of an hour.

Q. Did you hear any conversation that took place there that day? A. I did.

Q. Will you tell us what was said? A. I heard him demand a day's work of Mr. Platzman.

Mr. Maguire: May I move that the word "demand" be stricken out and the witness be requested to use the language actually used there?

The Court: I will let it stand subject to further testimony. What did he say?

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The Witness: I cannot say the exact words.

The Court: No, give the substance.

The Witness: Well, he said he wanted to get a day's work from him, and he is sending him in a day, he has got to pay for him, and if he did not pay for it, he is going to send pickets out for him and try to stop Mr. Leibowitz from baking for him.

346 *Abe Appelbaum—For Plaintiffs—Cross—Redirect.*

Mr. Maguire: I object to what he tried to do.

The Court: Strike it out. What were you doing there that day?

The Witness: Doing wiring on machines.

By Mr. Apfel.

Q. What else did Mr. Bernstein say that you remember? A. He just stated, he told Mr. Leibowitz if he is going to bake for him that day, he is going to hold him responsible for the day's work, and he will have to pay for it, and that is all.

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Cross-examination by Mr. Maguire.

Q. And then he left? A. Well—

Q. After this discussion Bernstein walked out, is that it? A. Well, I don't know whether he walked out, because I was working; he walked away from there later on. He did remain a little longer; how much, I don't know.

Q. The next thing you know he was gone? A. Yes.

Redirect examination by Mr. Apfel.

Q. He was in there about three-quarters of an hour? A. Yes, approximately.

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Mr. Apfel: Will you stipulate Mr. Zuckerman and Mr. Greenberg are members of the union?

Mr. Maguire: Yes; have you the full names?

Mr. Apfel: Harry Zuckerman and Hyman Greenberg.

Mr. Maguire: They are both members.

LEO LEIBOWITZ, 3073 Buhre Avenue, Bronx, New York City, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

Direct examination by Mr. Apfel.

Q. Mr. Leibowitz, are you in any way connected with the Diamond Baking Company? A. I am.

Q. What officer are you in that company? A. Secretary.

Q. Do you know whether there is any agreement or contract existing between the Diamond Baking Company and Wohl and Platzman? A. There is none. 350

Q. They are at liberty at any time to leave you and buy their merchandise some place else? A. They are.

Q. Do you remember about the 6th day of December, 1938? A. I do.

Q. Did you on that day see Mr. Hyman Bernstein? A. I did.

Q. Did you have a conversation with him that day? A. I did.

Q. Was he alone at that time? A. No, sir.

Q. He came in with other people, is that right? A. That is right.

Q. Will you tell us what Mr. Bernstein said and what you said? A. Well, Mr. Bernstein let me know that I was to tell Platzman and Wohl to give a day's work each to a union man. 351

By the Court.

Q. A day's work each? A. Yes.

Q. Each week a man? A. Each week for one man, for each man.

By Mr. Apfel,

Q. What else did he say? A. He said that he held me personally responsible, if I were not to tell them, or they were not to give the work.

Q. What did you say? A. I told him that I had nothing to do with these people, that they were only buying merchandise, and not employed by me.

Q. Was there anything else said? A. Well, yes.

Q. What was said? A. He said he would be back again in a day or two and find out from these boys and myself whether they were told that or not.

Q. Did you tell Mr. Wohl and Mr. Platzman of the visit of Mr. Bernstein? A. I did.

Q. When did you see Bernstein next? A. Oh, about a week or two later.

Q. Did you see him on the 16th day of December? A. I did.

Q. That was in the rear of your baking shop, wasn't it? A. That is right.

The Court: I thought that was the day on which the first conversation was had.

The Witness: No, on the 6th.

Q. Will you tell us what happened on the 16th of December in your shop? A. Well, about four or five union men came in and showed a letter to Mr. Wohl and Mr. Platzman, threatening them—

Mr. Maguire: I move to strike that out.

The Court: Strike out the part they threatened them.

Q. What did Mr. Bernstein say? A. Well, Mr. Bernstein said he would send his men out to picket Louis Platzman and Hyman Wohl unless they would give a day's work.

Q. Did Bernstein say anything to you at that time? A. Well, he said I will be liable for them, that I would have to pay if they did not take a man on.

Q. Did he say anything about your baking for them? A. Yes; he said that I should not bake for them unless they took a man on.

Q. Did you see Mr. Bernstein after that? A. Yes, I did.

Q. When? A. About a week later.

Q. Where? A. At our bakery.

Q. What was said at that time? A. Well—

Q. Do you remember what was said? A. I don't remember. 356

Q. Do you remember the 23rd of January, 1939? A. Yes, I do.

Q. Is that the day they picketed your place? A. That is right.

Q. Who was doing the picketing? A. A couple of drivers.

Q. Did you speak to Bernstein that day? A. Yes, I did.

Q. What did you say to him and what did he say to you? A. Well, he told me that the reason why the pickets were there is because these boys did not give union men work, and that I would be responsible for the two days previous that the union men came in and were not employed by these people. 357

Q. What did you say? A. I told him I was not responsible and I would not pay it.

Q. Did he say anything about baking for the boys at that time? A. Yes; he did not want me to bake for them.

Q. Did he tell you at that time when you must stop baking for them? A. Yes; he gave me a day.

Q. Did you see him on the 25th of January? A. Yes, I did.

358 *Leo Leibowitz—For Plaintiffs—Direct—Cross.*

Q. Were they picketing your place again? A. That is right, they were.

Q. Did you speak to Bernstein that day? A. Yes, I did.

Q. What did you say to him? A. Well, I told him that these boys made up their minds not to give any work, and that I had nothing to do with them, and would he remove the pickets.

Q. Did he tell you something about not baking for them? A. Yes; he told me not to bake for them.

Q. What did you say? A. I told him I would not bake for them.

359 Q. That is all that was said? A. I don't remember more than that.

Cross-examination by Mr. Maguire.

Q. In any event, you did not continue baking for them, did you? A. No; we baked continually.

Q. And right since the early part of December you have been baking continuously for them? A. That is right.

Q. And there has been no interruption whatsoever? A. That is correct.

360 Q. You say on, I think you said the 23rd and the 25th, there were pickets. That was one man walking up and down with a sign with Wohl's name on it and the other man with a sign with Platzman's name on it; is that it? A. That is right.

Q. Just the two men walking on the sidewalk with these signs? A. That is right.

Q. You have a partner or an associate in this company by the name of Kasper, have you not? A. Yes, I have.

Q. And Mr. Kasper is a stockholder of your company? A. Yes; he is the president.

Q. And he is the man that is a brother-in-law of Platzman? A. That is right.

Q. Is Mr. Kasper in court to-day? A. No, he is not.

The Court: What does Kasper do there, did you say?

The Witness: He drives a truck.

Q. Do you know whether or not a subpoena was left by my representative at your office yesterday for Mr. Kasper, requiring his appearance here? A. Yes, I heard there was one left.

Q. And Mr. Kasper is not here to-day? A. Mr. Kasper left late yesterday and I left before Mr. Kasper came in. 362

By the Court.

Q. Is Kasper employed by the Diamond Baking Company? A. No; Kasper is a stockholder.

Q. Is he employed by the corporation, the Diamond Baking Company? A. Yes.

Q. In what capacity, what does he do? A. He is the president of the corporation.

Q. Kasper? A. Yes.

Q. I thought you said he drove a truck? A. He does drive a truck.

Q. For the corporation? A. Yes. 363

Q. What does this truck do? A. The truck makes deliveries to grocery stores.

Q. For the corporation? A. That is right.

Q. But you do do business, besides selling to peddlers, you do business on your own account? A. Yes, we do.

Q. With grocery stores, is that right? A. Yes.

Q. I think one of the witnesses testified— A. He was mistaken about that; there is a house route which has nothing to do with our route.

Mr. Apfel: The witness testified there was a house route which was operated by some individual. I don't think he ever testified that the Diamond Baking Company had no route of their own.

The Witness: No; he was mistaken about that.

The Court: He said they sold to private customers.

Mr. Apfel: I mean that is the house route, they had reference to.

The Court: Leibowitz just testified that he sold to grocery stores. That is a different thing.

The Witness: Yes, but Mr. Wohl was correct about one thing, if I could straighten that out. He meant house to house deliveries. There is a peddler buying merchandise from us that delivers from house to house, where we deliver to groceries only.

Q. You are in competition with these peddlers, aren't you? A. Well, incidentally we are.

Q. You sell them, then you compete with them? A. No, we don't compete with them; we happen to have our own customers, not to bother theirs. They buy of us.

By Mr. Maguire.

Q. How many trucks does your company own?

A. We own two trucks.

Q. That is a G. M. C. truck? A. That is a Dodge.

Q. Is it a Dodge Mr. Kasper, the president of the company, drives? A. That is correct.

Q. On this route you have spoken of? A. That is right.

Q. About how many stops are there on your route? A. About eighteen.

Q. Approximately how much merchandise is taken out on that truck to serve these places? A. In dollars and cents?

Q. Yes. A. I don't know; I don't run that end of it.

Q. How many days a week does Mr. Kasper work operating the truck? A. Five days.

Q. Then two days a week there is a relief man? A. That is right.

Q. Who is the relief man on that route? A. Harry Bart.

Q. How long has Mr. Kasper been operating that route five days a week? A. About a year.

Q. Then in this period of approximately a year he has had a relief driver two days a week? A. That is right.

Q. Prior to that time who operated that route for your company?

Mr. Apfel: Objected to as immaterial.

The Court: Objection overruled.

Q. Who drove it? A. Bellinger.

Q. And he was a regular employee of the company? A. That is right.

Q. And a driver that you paid a wage to? A. That is right.

Q. At that time, and I guess even now, you have a contract with Local 802, have you not, your company? A. No; we have no contract.

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Leo Leibowitz—For Plaintiffs—Cross.

Q In any event, Kasper is a member of Local 802? A He is.

Q. And has been throughout all the period of time? A. Well, I imagine about eight or nine years.

Q. Is it the fact that prior to this time, prior to approximately a year ago when this fellow Bellinger drove the route that Kasper used to relieve him one day a week on the route, isn't that the way it was worked? A. No, sir.

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Q. Who was the relief man on that route then? A. It started off with Kasper being the driver and Bellinger was the helper, while we had plenty of work inside and outside, and Bellinger used to run the truck about as often as Kasper. Bellinger worked six days a week at that time.

Q. But was it approximately a year ago that you swung over, and let Bellinger out, then Kasper took the route over and worked five days a week, then you took in a relief man for two days? A. No, sir; it was not quite that way.

Q. How did that work out? A. Well, Bellinger worked about four days, then he worked two, and two somewhere else, then he finally dropped out of our bakery altogether.

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Q At the time that Kasper took over regularly to operating the route five days a week, was not that approximately the time, or wasn't it the same time that Wohl started to give this man Rubin one day a week; do you recall that? A. Well, it was about a year ago, I imagine.

Q. I know, but wasn't it approximately the same time that Wohl started to give Rubin one day a week, is that right? A. I don't remember that.

Q. Did you have any conversation with any union representative at about the time that Kasper started to regularly operate the route five days a week? A. Yes.

*Leo Leibowitz—For Plaintiffs—Cross.
Motion to Dismiss.*

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Q. Whom did you have the conversation with?
A. Mr. Hymie Bernstein.

Q. Do you know of your own knowledge whether or not Kasper made an application to the Executive Board of Local 138 for permission to let Bellinger go and to operate the route himself?

Mr. Apfel: Objected to as absolutely immaterial, irrelevant and incompetent.

The Court: Objection overruled.

Mr. Apfel: Exception.

Q. Do you recall if Kasper made an application to the Executive Board of the union, at that time Local 138, for leave to discharge Bellinger as a regular route driver and to take over and operate the route himself on this five-day basis? A. No. 374

Q. You don't recall that? A. I don't recall that.

Mr. Apfel: That is the plaintiffs' case, if your Honor please.

(Plaintiffs rest.)

Mr. Maguire: If the Court please, I move to dismiss on the ground that this is a labor dispute within the provisions of Section 876-A of the Civil Practice Act, and the plaintiff has failed to establish any compliance with that act. 375

The Court: I thought Judge McLaughlin held in this case this was not a labor dispute.

Mr. Maguire: That is actually so.

The Court: That is the law of this case.

Mr. Maguire: Yes, but for the purposes of the case I make the motion.

The Court: Denied.

Mr. Maguire: Exception. I further move to dismiss on the ground the plaintiff has

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*Motion to Dismiss.**Peter J. Sullivan—For Defendants—Direct.*

failed to make out any cause of action and has failed to show facts which warrant the granting of the relief sought.

The Court: I think they have made out a prima facie case; I will deny the motion. You may have an exception.

DEFENSE.

PETER J. SULLIVAN, 8215 Fourth Avenue, Brooklyn, N. Y., one of the defendants, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination by Mr. Maguire.

Q. Mr. Sullivan, you are the president of Local 802 of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America? A. I am.

Q. And that organization is affiliated with the American Federation of Labor? A. It is.

Q. The Central Trades Labor Union of Greater New York, and other central bodies of this City and State? A. That is correct.

378 Q. Local 802 has what labor jurisdiction? A. Over all bakery drivers of Greater New York.

Q. When was it started? A. August 1, 1938.

Q. Prior to that date that labor jurisdiction was vested in Local 138 of the International Brotherhood of Teamsters, was it not? A. That is right.

Q. And has been in that local union for approximately how many years? A. Oh, I should judge about fifteen or twenty years.

Peter J. Sullivan—For Defendants—Direct.

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Q. You, yourself, were an official of Local 138, were you not? A. I was.

Q. For how long a time? A. January 1, 1938.

Q. To August 2nd when the charter was issued to Local 802? A. That is correct.

The Court: When was Local 802 started?

The Witness: On August 1, 1938.

Q. At the time that Local 802 was started under the direction of the International Union, which is the parent body, the bakery drivers and bakery contacts were turned over from Local 138 to Local 802? A. That is right.

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Q. Local 802 succeeded, to the extent of the bakery jurisdiction, to the membership and the contracts which Local 138 had in the baker's field? A. That is right.

Q. How long were you a member of Local 138? A. About ten years.

Q. Prior to the time that you took office as president of Local 138, what was your work? A. I was a route salesman.

Q. For what concern? A. California Pie Company.

Q. How long had you worked for that company? A. Since 1924.

Q. When you say route salesman, you mean a route operator, route driver? A. That is right.

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Q. Prior to this job with the California Pie, were you also employed in this industry? A. The Consumers Pie Baking Company.

Q. How long were you with that company? A. About three years.

Q. As a route salesman or driver? A. As a route salesman.

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Peter J. Sullivan—For Defendants—Direct.

Q. Your organizations, both 138 and 802, are operated under a constitution and by-laws of the International Brotherhood? A. That is correct.

Q. I show you this printed booklet and ask you is that the constitution and by-laws of the International Brotherhood? A. It is.

Mr. Maguire: I offer in evidence the preamble, and Sections 1, 2, 3 and 4 of the International constitution.

Mr. Apfel: I object to this. It is immaterial to the issues involved in this case.

The Court: I will allow it to go in.

Mr. Apfel: Also on the further ground it is a self-serving declaration.

The Court: It may go in; you may have an exception.

(The sections of the constitution quoted, together with the preamble, were received in evidence and marked Defendants' Exhibit C.)

Q. All told, you have been employed in this industry for how many years? A. Since 1921.

Q. Throughout that entire period of time, through your working in it, you acquired a general knowledge of the conditions in the industry, is that right? A. Most surely did.

Q. From the years leading up to 1938 and 1939 was Local 138 active in its efforts to organize drivers? A. Well, not particularly active in the baking field.

Q. But in the baking industry, I mean; when did they become active in the baking industry? A. Really active in the last ten years.

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*Peter J. Sullivan—For Defendants—Direct.
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✓ Q. And in their efforts to organize, they persuaded men to become members of the union? A. That is right.

Q. And they negotiated with employers and arrived at collective bargaining agreements? A. That is correct.

Q. And at times were required to call strikes in order to procure agreements? A. That is right.

Mr. Apfel: I object to this, immaterial.

The Court: I don't think it is very material, what they did. I sustain the objection to it.

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Q. As a result of all these efforts did Locals 138 and 802 come to have a good many contracts in the baking field with employers?

Mr. Apfel: I object to that.

The Court: I do not see how it is material to the case here.

Mr. Maguire: It is material in this way: I want to show the absence of malice on the part of the union.

The Court: I don't think you do that, because there is no proof here as yet that there was any violence. I don't think that is necessary, without any evidence of malice or violence of any kind.

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Mr. Maguire: I want to show the conditions the union attained for the people in the industry, the drivers, and I want to directly establish that the manner in which these peddlers are conducting and carrying on their business is undermining and directly breaking down and inevitably will break up

the union and break down all of the conditions which it has attained.

The Court: How are you going to prove it by this testimony?

Mr. Maguire: Well, I have to prove what they have attained.

The Court: You have got a union here, there is no question about that; you have that. You have the constitution and by-laws. I don't think you need to prove anything beyond that.

Mr. Maguire: I respectfully submit I should prove how many men have come to be members, how many contracts have been procured with employers.

The Court: Have you contracts, such as those with Diamond?

Mr. Maguire: Not Diamond, but we have typical contracts.

The Court: If you have got contracts with Diamond and Bernstein and Dickerman, and Wappinger, and Pyrex.

Mr. Maguire: I am unable to establish I have contracts with those four.

The Court: Objection sustained; you may have an exception.

Mr. Maguire: Before I go further may I actually offer in evidence, to be deemed and considered a typical contract which the union is a party to, an agreement with the Concourse Bakery, of 1612 Jerome Avenue.

Mr. Apfel: I object to it on the ground it is not binding upon the plaintiffs in this action, that it is immaterial and irrelevant to the issues involved.

Defendants' Offer of Proof.

The Court: I sustain the objection, and give Mr. Maguire an exception.

Mr. Maguire: If your Honor will recall, I only offered in evidence the International constitution to the extent of the preamble and Sections 1, 2 and including 4. At this time I will offer the entire constitution.

Mr. Apfel: I object to it.

The Court: I will let it be marked; you may have an exception.

(The complete constitution was received in evidence under the same exhibit number, Defendants' Exhibit C.) 392

(Adjourned until to-morrow, March 23, 1939.)

March 23, 1939.

TRIAL CONTINUED.

The defendants make the following offers of proof, and as to those items to which the plaintiffs fail to object, and as to those items to which objections are made but which objections are overruled by the Court, it is conceded by the plaintiffs that defendants' witnesses would so testify, without conceding the truth thereof: 393

A. The union offers to prove the following:

1. That Local 802 and Local 138, the predecessor union, having labor jurisdiction over bakery drivers in the City of New York, after twenty years or more of organizing activities, have acquired a mem-

bership of approximately 1700 bakery drivers, and have secured, so that they have at this time, approximately 200 contracts with bakeries, wherein minimum wages, plus commissions, are required to be paid, which same are substantially in excess of the earnings of "peddlers," hours of employment are prescribed, holidays with pay, that a working week consists of but six days, and that the route must be operated by a relief man on a seventh day.

Mr. Apfel: The plaintiff concedes that the witnesses for the defendant will so testify and objects on the ground that it is immaterial and irrelevant.

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(Objection overruled. Plaintiffs except.)

2. That additionally, there have been organized in New York, under the banner of Local 50 of the Bakery and Confectionery Workers, which claims an industrial type of jurisdiction, approximately 1,000 bakery drivers whose wages, hours and working conditions approximate those attained by the members of Local 802.

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3. That these conditions of the approximate 2700 organized drivers have been attained only after many years of effort involving organization of the men, that is, lawfully persuaded them to become members of the union, collective bargaining with employers which resulted in agreements, and at times strikes which resulted in agreements, all such agreements prescribing the wages, hours and conditions of bakery drivers.

4. That approximately five years ago in New York City there were comparatively few "peddlers" or so-called independent jobbers; that at most they numbered fifty and were largely men who had a long established retail trade.

Defendants' Offer of Proof.

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5. That the Social Security and Unemployment laws were put into effect approximately four years ago.

6. That thereafter the number of "peddlers" engaged in distributing bakery products increased substantially from year to year, until at this time there are in the City of New York more than 500 "peddlers" or independent jobbers.

7. That in the past eighteen months several baking companies which theretofore operated bakery routes through using employed drivers on routes owned by the companies, at the expiration of their contracts with the union, which contracts prescribed minimum wages, hours, working conditions, etc., and a six-day week, notified the union that it would no longer employ such drivers, that they would no longer become parties to the agreements with the union of the nature aforementioned, and, after discharging the employee drivers, such companies proposed to such employee drivers that they purchase trucks for nominal amounts, in some instances \$50, and thereupon, as "peddlers" and jobbers purchasing the baked products from the companies, should undertake to serve such routes.

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8. That there were at least 150 drivers in such period mentioned in the previous paragraph who were members of the union and working under union conditions and contract who, within the past eighteen months, were discharged and required to sever their connections with the companies for which they theretofore had worked, unless they agreed to and undertook to act as "peddlers" or distributors, and that in approximately fifty of such instances the men did become "peddlers" and thereupon abandoned their membership in the union.

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Defendants' Offer of Proof.

9. That "peddlers" or independent jobbers are not covered by Workmen's Compensation Insurance, Social Security or Unemployment Insurance, and that an employer who changes his method of distribution from using employee drivers to "peddlers" or independent jobbers saves considerable by way of premiums and taxes.

Mr. Apfel: The plaintiff concedes that the witnesses for the defendant will so testify, but objects on the ground it is incompetent, irrelevant and immaterial.

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(Objection overruled. Plaintiffs except.)

10. That similarly some small baking establishments, such as the Diamond Bakery, where it had the possibility of extending its output, looked for, solicited and tried to build up distribution of its baked products by the use of "peddlers."

Mr. Apfel: The plaintiff objects to it.

The Court: I sustain the objection; you may have an exception.

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11. That as the number of "peddlers" increased, unemployment amongst union drivers increased, this as a direct result of the "peddlers" working seven days per week and the "peddlers" having a lesser income and other considerations required by the union contract, causing the discharge of union employed drivers through absorption of the business by the "peddlers."

Mr. Apfel: The plaintiff objects to it.

(Objection sustained. Defendants except.)

12. That through the increase in the use of "peddlers" in the past five years hundreds of union employed drivers have lost employment.

Mr. Apfel: Objected to.
(Objection sustained.)

13. That if "peddlers" are to be permitted to increase, uncontrolled and unregulated, in any respect, definitely and inevitably, bakers who employ drivers in order to meet competition where the cost of selling and delivery is an important element, will be forced to, in order to survive, adopt the "peddler" method of distribution and to refuse to make an agreement with the union providing for minimum wages, a six-day week, etc.

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Mr. Apfel: Objected to. What the future conduct may be is too problematical.
(Objection sustained. Defendants except.)

14. That if those who are presently employers and parties to contract with the unions upon the expiration of those contracts, to survive, are required to adopt the "peddler" system of distribution, then the wages, hours, working conditions, six-day week, etc., attained by the union after long years of struggle will be destroyed and lost.

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Mr. Apfel: The plaintiff will concede the defendants' witnesses will testify as stated in paragraph 14, but objects to it.

The Court: Objection overruled.

15. That an employer who continued after the general establishment of the "peddler" system for

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Defendants' Offer of Proof.

distribution of baked products would be unable to profitably carry on his business if he were to pay the union wages and grant the union hours, six-day week and other conditions, would inevitably fail and become a bankrupt.

Mr. Apfel: That is objected to.

The Court: That is sustained. I don't think that would follow at all.

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16. That the union, in good faith, knowing of the increase in the use of "peddlers" for the distribution of baked products, in the spring of 1938 made an effort to persuade the "peddlers" to become members of the union.

Mr. Apfel: I will concede they will so testify, but make an objection.

The Court: Allowed.

17. That those "peddlers" who desired to become members of the union were admitted to membership and were only required to conform to and abide by the same Constitution and By-Laws, rules and regulations as were all other members and that included therein was a requirement that no union member should work more than six days per week.

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Mr. Apfel: I concede they will so testify and make an objection.

The Court: I will overrule it; you may have an exception.

18. That the plaintiffs herein were asked to join the union, each of them signed an application to so do, but neither of them appeared at meetings that were thereafter called for those who had made ap-

Defendants' Offer of Proof.

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plications, nor did they in any further respect act towards the establishment for them of membership in the union.

The Court: I think that was so testified.

Mr. Apfel: Yes, they offered certain applications in evidence which your Honor sustained the objection to, but I will concede that they will so testify and take my objection and exception.

The Court: I will overrule it.

19. That those "peddlers" who did apply for membership and who took the necessary steps to acquire membership, were accepted into full membership in the union and the only requirements imposed upon them were that they conform to the Constitution and By-Laws and comply with the rules and regulations of the union which generally applied to all members. 410

Mr. Apfel: I concede they will so testify and take my objection.

The Court: I will overrule the objection.

Mr. Apfel: Exception.

20. That when a substantial number of "peddlers" refused and declined to become members of the union, the union, after investigation, conference and study, concluded that the unrestricted and unregulated use and extension of the use of "peddlers" for the distribution of baked products in the City of New York constituted a direct menace to the maintenance of union wages, hours, conditions, etc. 411

Mr. Apfel: I object to that. That is merely a conclusion.

The Court: Yes, I think that is a mere conclusion. I sustain it; exception.

Mr. Maguire: But, of course the union has made the proffer of proof.

The Court: Yes.

21. That the union thereupon determined that a reasonable restriction and regulation of the "peddler" was to seek an understanding with him, whether he was a member of the union or not, that he work but six days a week and that he employ for one day in a week an unemployed union member.

Mr. Apfel: I concede they will so testify and I object to it.

(Objection overruled. Plaintiffs except.)

22. That thereupon the union decided upon a course of appealing to the "peddler" to work but six days a week and to employ an unemployed union man as a relief man on the seventh day, such man to be selected by the "peddler."

Mr. Apfel: Objected to.

The Court: The proof shows you did that in this case. I will sustain the objection; you may have an exception.

23. The union further decided that in the event a "peddler" declined to work but six days per week and employ a relief man, that thereupon an appeal would be made to the public by peaceful picketing and truthful statements, in which it would be sought to secure the public support for the cause so espoused by the union.

Mr. Apfel: Objected to. What they decided is immaterial.

The Court: That is what actually happened. I sustain the objection.

Mr. Maguire: The proffer having been made.

The Court: Yes.

B. The public has an interest in the "peddler" or "independent-jobber" distribution, in that

They are not covered by Workmen's Compensation Insurance. In the event of an injury in the course of their duties, with their limited means, they become public wards and charges, and their families are required to be supported by charity or public relief.

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Mr. Apfel: I have no objection to the part that they are not covered by Workmen's Compensation Insurance, but it is a mere conclusion with their limited means they become public charges.

The Court: I sustain the objection. I will allow the proof in in so far as the statement is made that they are not covered by Workmen's Compensation Insurance. The objection to the remainder of the offer of proof is sustained.

Mr. Maguire: Exception.

2. They, the "peddlers" or their employers through utilizing economic pressure, having established themselves as "peddlers" and the means of distributing baked products, removed themselves from the benefits of the Social Security and Unemployment Laws.

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Mr. Apfel: I concede they are not covered by Social Security or Unemployment Laws; I object to the rest of the paragraph.

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Defendants' Offer of Proof.

The Court: Objection sustained to the remainder of the offer of proof.

Mr. Maguire: Exception.

3. This means that in the economic planning of the State and Nation, those who become "peddlers" are removed from the benefits of these laws, and that the laws and their intent are nullified, and that eventually, when considered discards, or their income becomes so low that they cease their efforts to continue, "peddling," they become charges on the general public.

419

Mr. Apfel: Objected to. That is a mere conclusion.

The Court: Yes, sustained; it is a mere conclusion.

Mr. Maguire: Exception.

4. "Peddlers," contrary to the spirit of the existing State Laws, do not carry public liability or property damage insurance, and in the event a member of the public is injured as a result of the operation of their vehicles, the public meets only with irresponsibility and non-payment of damages.

Mr. Apfel: Conceded, as far as they did not have public liability or property damage insurance.

420

The Court: The plaintiffs.

Mr. Apfel: Yes.

The Court: That these plaintiffs did not carry public liability or property damage insurance.

Mr. Apfel: Yes.

The Court: Objection sustained so far as the remainder of the offer of proof is concerned.

Mr. Maguire: I respectfully except.

Defendants' Offer of Proof.

421

5. The bread, rolls, etc., sold by "peddlers" is not in a wrapped package when delivered to the retail store or consumer by the "peddler." This leaves a situation wherein the public is faced with financial irresponsibility in the event of a suit for breach of warranty by reason of a foreign substance in the baked product.

It also relieves the baker, for all practical purposes, from all financial responsibility to retailer or consumer as a result of a foreign substance:

Mr. Apfel: I object to that as immaterial.

The Court: Objection sustained.

Mr. Maguire: Exception.

422

6. Health laws, rules and regulations are promiscuously violated by "peddlers." "Peddlers," in their anxiety to secure business, and with a complete disregard of sound, economic laws, establish sale prices to their customers, on the theory that it costs them only their time to serve them, which time they consider of no special value and thereby create sale prices, economically unsound and impossible to compete with by an employer who carries Workmen's Compensation Insurance, Social Security and Unemployment Insurance and conforms to union wage, hour and other conditions.

423

Mr. Apfel: I object to that as immaterial and a conclusion.

The Court: Objection sustained.

Mr. Maguire: I respectfully except.

7. That "stale" return to "peddlers" means "stale" baked products, which in the custom of the trade, the seller takes back when undisposed of over

the retailer's counter, is through unsanitary methods, rehabilitated and resold for public consumption.

Mr. Apfel: I object; the testimony is to the contrary.

The Court: I will give the defendant an opportunity of proving that in this case now.

Mr. Maguire: In this particular case, if I am limited to that, I know I cannot prove it.

425 The Court: I will give you a chance of proving in this case that these plaintiffs, when they testified they had to take back stale baked products at their own expense, are not telling the truth; you may prove the contrary.

Mr. Apfel: And also they disposed of it, threw it away.

The Court: Yes, they said they threw it away.

Mr. Maguire: Frankly, I cannot prove what these two plaintiffs did, or how they disposed of the stale baked products. I am able to prove, and offer to prove, that fairly generally amongst peddlers an attempt is made to rehabilitate the products and resell them.

426 The Court: I am not concerned with what happens in the case of other peddlers. After all, this is merely offered to show what the weekly earnings of these men were—to show their income; they stated their income was reduced by the fact they had to take back these stale baked products at their own expense. So I sustain the objection.

Mr. Maguire: I take an exception.

8. That responsible companies employing employee drivers dispose of "stale" by selling the same as animal feed, fertilizer, or for other purposes than human consumption.

Defendants' Offer of Proof.

427

Mr. Apfel: I object to that; it is immaterial what other companies do. The testimony is to the contrary in this case.

The Court: Objection sustained.

Mr. Maguire: Exception.

9. That plaintiff Wohl, in fact, works substantially in excess of the hours testified to by him, that his route even on a short day, Sunday, requires approximately five hours to serve, and on week-days for deliveries and collections, approximately ten hours per day.

Mr. Apfel: I object to that because Wohl testified he only work thirty-three hours a week. 428

The Court: I will allow counsel for the defendant to prove that.

Mr. Maguire: May I say that to prove it, I have Rubin, who was the relief man on Sundays. I can offer his testimony. On the other phase of it, I have to offer two or three witnesses. If your Honor thinks that is material, I will do that, but I do not think this strikes to the heart of the controversy.

The Court: You don't think it does?

Mr. Maguire: No, the period of time that he worked.

The Court: I don't think so myself. It only has a bearing on the credibility of his testimony, that is all. 429

Mr. Maguire: If Rubin testifies he worked five hours on Sunday,—

Mr. Apfel: It does not bind the plaintiff, because the plaintiff may be more familiar with the route.

The Court: Yes; Wohl may be quicker in the disposition of his work than Rubin would be.

Mr. Maguire: Will you concede that Rubin, if called, would testify that he has been a bakery

430

Defendants' Offer of Proof.

driver for a good many years and that he worked on this route on Sundays for approximately ten weeks, and that if called he would testify that it required him five hours to serve the route on Sunday?

Mr. Apfel: That it required him five hours, I will so stipulate.

Mr. Maguire: All right.

Mr. Apfel: But it is not binding on the plaintiff.

The Court: You concede he will so testify.

Mr. Apfel: Yes.

431

The Court: Let it go in like that; then you withdraw No. 9.

Mr. Maguire: Yes, except to the extent that has been stated in the record.

10. That plaintiff Platzman is a union member, obligated to conform to the Union Constitution, By-Laws and rules and regulations of the union, and that as such, in working seven days a week, he violates all union rules and regulations and therefore violates his contract with the union.

Mr. Apfel: I object to that. Platzman testified he has not paid any dues there for over two or three years.

432

The Court: Let that be proved.

Mr. Apfel: What a member in good standing is. He also testified he went to the delegate at that time and asked for employment and the delegate never gave him any employment, that is why he was required to leave the union.

Mr. Maguire: The proof of any of that will be the constitution and by-laws which are marked in evidence.

Defendants' Offer of Proof.

433

The Court: You may prove No. 10; I will overrule that, subject to proof.

11. That in arranging with "peddlers" for relief men, the union did not insist upon a relief man being paid beyond the time that he actually worked, but on the basis of the union's daily wage, fixed a scale for part of a day if but part of a day was required for service of a route.

Mr. Apfel: The testimony in this case is that they demanded \$9 a day for a man.

The Court: Are you going to contradict the testimony they demanded \$9 a day?

434

Mr. Maguire: Will you concede this, if Hyman Bernstein, the business representative, were called, he would testify that at the conference which he had with the plaintiff Wohl at his home, he offered to arrange for a relief man working on Sundays and being paid \$5 for Sunday?

Mr. Apfel: If it is on Sunday only, I will concede that he would so testify.

The Court: Then No. 11 is withdrawn?

Mr. Maguire: Yes.

12. That the plaintiff Wohl employed a relief driver for approximately ten weeks, which driver worked on Sundays, it being required that he work approximately five hours each Sunday. That the pay required therefor and which same was paid for that relief driver was \$6, the normal day's wage required for a full day being \$9.

435

Mr. Apfel: I will concede we had a relief man for ten weeks and paid him \$6.

The Court: All right, I think that concession covers it.

436

Defendants' Offer of Proof.

Mr. Maguire: Yes.

The Court: And that will be accepted in place of the offer of proof.

Mr. Maguire: Yes.

13. That in many instances where "peddlers" hired a relief man for one day each week, the bakers from whom they purchased their products immediately revised the price for which they bought the baked products, so as to absorb this additional expense to the jobber of distribution of the bakery's products.

437

Mr. Apfel: I object to that. What other bakeries did is immaterial. As I understand from the plaintiff, when he hired this man he did not revise his schedule.

The Court: I will sustain it; you may have an exception.

Mr. Maguire: Exception.

14. That wherever legally possible and in order to avoid responsibility to those who might be injured by the use of trucks operated by the plaintiff, they keep such trucks in the names of others than themselves.

Mr. Apfel: I object to that.

438

The Court: Objection sustained.

Mr. Maguire: I respectfully except.

C. That the certificate of incorporation of the Diamond Bakery, Inc., includes the right to distribute as well as bake products.

Mr. Apfel: That is right.

The Court: That is conceded?

Mr. Apfel: Yes.

Defendants' Offer of Proof.

439

1. That the attorney who represents the plaintiffs here was the attorney who incorporated the Diamond Bakery, Inc.

Mr. Apfel: I object to that; it is immaterial.

The Court: Sustained; I do not see that is material.

Mr. Maguire: Exception.

2. That the attorney who represents the plaintiffs here was an incorporator of the Diamond Bakery, Inc.

(Same objection, ruling and exception.)

440

5. That J. Kasper, president of the Diamond Bakery, Inc., is a member of Local 802 and subject to its Constitution, By-Laws, rules and regulations.

Mr. Apfel: Stipulated that the defendants will so testify.

6. That neither the names of Platzman nor Wohl appear in any way on the store window or front of the Diamond Bakery, Inc.

Mr. Apfel: I think that has already been covered in a previous offer of proof.

Mr. Maguire: No, it has not.

Mr. Apfel: It does not appear there.

Mr. Maguire: It is conceded?

Mr. Apfel: Yes, that it does not appear there.

441

7. That neither the names of Platzman nor Wohl appear on the trucks which they operate in connection with their "peddling" business.

Mr. Apfel: So conceded.

Defendants' Offer of Proof.

8. That the defendant, the union and union officials are well-disciplined, who adhere to the law as they see it and as advised by counsel and who have not been guilty of any violence, threats of violence, disorderly picketing or misstatements.

Mr. Apfel: That is objectionable on its face.

The Court: Will you concede, however, that in the picketing so far as has been testified to there were no acts of violence or threats of violence, disorderly picketing or misstatements?

Mr. Apfel: Conceded.

The Court: The rest of it I don't think is material.

Mr. Apfel: Alleging they were disciplined.

The Court: No.

9. That the defendant union here has solely acted with the desire and purpose of maintaining union wages, hours and conditions, and in the definite belief that the extension of the "peddler" system, uncontrolled and unregulated, already has partially weakened the maintenance of this union's wages, etc., and that inevitably it will destroy the union and that which it has attained.

Mr. Apfel: I object to that.

The Court: Objection sustained.

Mr. Maguire: Exception.

10. That the union has acted with the further view that the extension of the "peddler" system of distribution, uncontrolled and unregulated, has substantially contributed to unemployment of its members.

(Same objection, ruling and exception.)

Defendants' Offer of Proof.
Case.

445

11. That the union has acted with the further view that the public interest requires some reasonable regulation and control of "peddlers."

(Same objection, ruling and exception.)

12. That the union has acted with the further view that the extension of the "peddler" system of distribution is calculated to nullify the Workmen's Compensation Insurance Law, Social Security Act and Unemployment Insurance Law.

(Same objection, ruling and exception.)

446

Mr. Maguire: On No. 7, I do not have proof that these two plaintiffs were involved in rehabilitating stale products, but rightly believe I can establish that generally in the industry, and amongst peddlers, that course is followed.

The Court: I don't think what has been the general course or what is the general course of peddlers in disposing of stale products is material. What these particular plaintiffs did with respect to stale products would be material and on the question of what their so-called profit was.

Mr. Maguire: Will it be considered I have proffered this other proof and the Court has held—

The Court: Yes, I give you an exception: I do not think it is material. For that reason I sustain the objection to it.

447

Mr. Maguire: On No. 10, I believe that my proof is already in the record in the constitution and by-laws of the International Union.

The Court: As far as you have shown that Platzman has not paid his dues in two years—

Mr. Apfel: Approximately three years.

Mr. Maguire: Two years.

The Court: Two or three years.

Mr. Apfel: He paid them for two months after he lost his position with the Grand Bakery; that is the testimony.

The Court: Does that mean he is still a member in good standing?

Mr. Apfel: I doubt very much if he is a member in good standing.

The Court: What does the constitution say?

449 Mr. Maguire: The constitution says that a man who fails to pay his dues for a period of three months becomes automatically suspended, but he is still, in my opinion, a member of the organization, the only effect upon him being this, that he is deprived of certain of the rights which he otherwise would have as a member. But there is no evidence here that he ever resigned from the union and I feel that he is a member of the union, even though it be in this suspended state; and once having become a member of the union, having permitted himself to continue by reason of not having resigned or withdrawn by any formal act of his, I think he is still obliged to conform to the rules.

The Court: As a suspended member what is he entitled to?

450 Mr. Maguire: He would be entitled to attend meetings he would be entitled to work in the trade as an employee. Frankly, the constitution is very broad and general in its language, and there isn't any particular provision here which would indicate that at a certain period of time, or after a certain period of time, he lost his membership. It provides for trials and expulsion, but it does not say anything whatsoever about a man automatically losing membership.

Motion to Dismiss.

The Court: It is your contention he is still a member of the union?

Mr. Maguire: I think so.

Mr. Apfel: As I understand, he was a member of Local 138 at that time. To-day it is 802. What the by-laws and constitution of 1938 were I don't know.

Mr. Maguire: The same ones. That is the International constitution that we have in evidence, and all local unions are controlled by the International constitution.

Mr. Apfel: I withdraw my prior objection to the admission of Exhibit No. B marked for Identification; that is as far as Louis Platzman is concerned.

452

(The paper marked Exhibit B for Identification was received in evidence.)

Mr. Maguire: Will you concede Wohl did sign an application for membership?

Mr. Apfel: Yes.

Mr. Maguire: I now rest, if the Court please.

Mr. Apfel: The plaintiff rests.

Mr. Maguire: I renew the motion made to dismiss at the close of the plaintiffs' case and I would like to mention in one minute just a few specific things in elaboration of that motion. I would like to call the attention of the Court to the fact that there is no proof whatsoever in his record of any damage having been sustained by either plaintiff. I would further like to have appear in the record, and it is so stipulated. I recall, that the statements contained in the picket sign were accurate, and if there is any feeling that in any respect the sign itself was improper even though it stated the truth and only the truth, that in so doing, or preparing such a sign, the union did not do it with any knowl-

453

edge that it might be violating any law, and if a different sign or a different statement would be legal and proper, under such circumstances the union would gladly conform to whatever might be held to be a proper picket sign.

The Court: That would mean, of course, you claim the right to continue the picketing?

Mr. Maguire: Yes. I make that reference because in one of the affidavits of the plaintiff's, he made a statement that the trouble with the sign was that it was misleading, and that the sign should have specified that these men are independent jobbers. If that is a statement of his legal position, we are certainly willing to revise the sign so as to make it 100 per cent. unquestionably accurate, although the concession that it is accurate is in the record.

(Decision reserved.)

(Defendants to serve plaintiffs' counsel with a brief one week after delivery of the minutes. The plaintiff to serve his brief within a week thereafter, and all briefs and replies to be submitted on April 17th.)

Plaintiffs' Exhibit 1.

457

*Car Invoice and Three Receipts.***CAR INVOICE****C 939****Customers Copy****PARIS CHEVROLET CORP.****2633 E. Tremont Ave. near Westchester Square****Telephone UNderhill 3-4700-1-2-3-4****Bronx, N. Y.****December 7, 1938****Sold to HYMAN WOHL****Address 740 Cauldwell Avenue Bx NY City** 458**Salesman: Fick**

Make	Model	New or Used	Serial No.	Motor No.	Key No.
Chevrolet	2JC12	New	3162	KB34202	8944
	OSP #	808018			8437

Description	Amount
Commercial Panel.....	701.50
Prestone.....	4.45
New Car Freight and Handling.....	
Time Price Differential and Insurance....	57.48
no apd.	
License.....	4.59
NY City Sales Tax.....	10.12
Total Sale.....	773.55

460

Plaintiffs' Exhibit 1.**SETTLEMENT**

Cash on Delivery.....	164.57
Previous Deposit.....	20.00
Used Car—Chev. Panel '35.	
Type UC #37.....	200.00
Serial No.	
Motor No.	
Notes: 18 @ 21.61	
CIT.	388.98
	<hr/>
Total.	773.55
	<hr/>

461

Paris Chevrolet Co., Inc.

PAID

12/7/38

164.57

Per R. Jeshe

Always Show Serial, Motor and Key Number.**ORIGINAL****WESTERN UNION RECEIPT**

Date: Jan 6 1939

Received from H WOHL.....\$12.20

462

Twelve and 20/100 Dollars, for transmittal to

C. I. T. Corporation—2488 Gr Con NYk Branch,

Payment to apply on Account No. 6089

Purchaser,

WESTERN UNION TELEGRAPH COMPANY

1047 E 163 St. NYk Office

by M Singer

(Stamped on reverse side)

1939 Jan 6 PM 8 13

ORIGINAL

WESTERN UNION RECEIPT

Date: Jan 6 1939

Received from H WOHL.....\$21.61
 Twenty One and 61/100 Dollars, for transmittal
 to C. I. T. Corporation—2488 Grand Con NYk
 Branch.

Payment to apply on Account No. 6089

Purchaser.

WESTERN UNION TELEGRAPH COMPANY

: 1047 E 163 St NYk Office

by M Singer

464

(Stamped on reverse side)

1939 Jan 6 PM 8 14

ORIGINAL

WESTERN UNION RECEIPT

Date: Feb 6 1939

Received from HYMAN WOHL.....\$21.61
 Twenty One and 61/100 Dollars, for transmittal
 to C.I.T. Corporation—2488 Gr Con NYk Branch.

Payment to apply on Account No. 6089

Purchaser.

465

WESTERN UNION TELEGRAPH COMPANY

1047 E 163 St NYk Office

by M Singer

(Stamped on reverse side)

1939 Feb 6 PM 7 58

466

Plaintiffs' Exhibit 2.*Group of Four Documents.*

Quadruplicate

MAB MOTORS, INC.
DODGE AND PLYMOUTH
USED CAR SALES AGREEMENT

1892 First Avenue
 New York City
 Telephone SACramento 2-4700

Bronx:**Manhattan:**

1630 Jerome Ave.

1866 First Ave.

2404 Grand Concourse

1700 Jerome Ave.

467

Branch: 1st Ave. Lot

Date: 10/28/37

Sold at Branch

Please enter my order for the vehicle described
 below:

Used Car No.

Make

Type

U4075

Dodge

Panel

Serial No.

Motor No.

License No.

Price of Used Motor Vehicle Delivered,

to be removed on 11/30/37..... \$450.00

Finance Charge..... 60.00

468

Total price to be paid as stated below \$510.00

Cash Deposit herewith 25.00

Used Trade In: Chev. Corn. Coupe

Serial No. Motor No. 3200855

which I will deliver to you free from
incumbrance on.....

in the same condition and with the

same equipment as of this date for... 125.00

Plaintiffs' Exhibit 2.

465

Cash payment due on the delivery of used vehicle to me.....	.....
Remainder (for which I agree to give you promissory notes) to be paid in 12 equal monthly payments of \$30 commencing one month after delivery.	360.00
Total Settlement.....	510.00

This quotation is subject to increase by the amount
of any sales or excise tax levied by the Federal
Government.

Not valid or binding unless signed by a duly au-
thorized officer of Mab Motors, Inc.

470

Plus 2% tax

Said Automobile respectively sold and purchased
in consideration of the aforesaid price, upon the
following terms and conditions:

Title to said Automobile shall remain in the
Seller under conditional sales agreement to be ex-
ecuted by purchaser on delivery of car until it is
fully paid for in Cash or by Certified Check.

Said Automobile is sold and purchased Not
Guaranteed as a second hand Automobile; and is
sold by the Seller and is accepted by the Purchaser
without warranty or guarantee of any kind or
nature.

471

The Purchaser acknowledges ample opportunity
of trial and inspection of said Automobile; and
delivery thereof is acceptance of same in its then
condition, and constitutes a waiver of all defects,
latent or otherwise, and all claims arising from
any cause whatsoever.

No representation by any person as an induce-
ment for the purchase of said automobile shall bind

172

Plaintiffs' Exhibit 2.

the Seller; all representations, if any, are incorporated in this agreement which contains all the terms and conditions of the sale of said Automobile.

No person other than an officer of the Seller has authority to alter or modify this agreement in any particular and all alterations and modifications must be made in writing and endorsed hereon.

If purchaser fails to remove car on removal date, Seller may resell the car and charge any loss or expense such as storage or otherwise against the amount on account.

473

Final payment must be made in cash or certified check.

Acceptance of this order subject to credit approval.

Purchaser: LOUIS PLATZMAN

Res. Address: 1988 Newbold Ave.

Phone No. City: N. Y. C. State: N. Y.

Bus. Address Phone No.

Print Name: LOUIS PLATZMAN

Salesman: P. LEEDS

Accepted for MAB MOTORS INC.

Per.

Date Accepted

474

360.00

No. 111-11641

October 30/37

1988 Newbold Ave., New York City, NY

Undersigned jointly and severally promise to pay to the order of MAB MOTORS INC. at the office of the Commercial Credit Corporation, New York, N. Y., Twelve monthly instalments of Thirty Dollars (\$30.00) each, the first instalment payable one (1) month after date, balance of instalments payable on even date of each succeeding month thereafter, until this note is fully paid, with interest on each instalment, after maturity, at the highest lawful rate.

476

If any instalment of this note is not paid when due, the entire amount hereof, together with interest and fifteen per cent. (15%) of the amount appearing unpaid hereon for collection expenses and attorney's fees, shall become due and payable forthwith at the election of the holder of this note. In those jurisdictions where permitted by law so to do, and except in the States of Indiana and New Mexico, Undersigned jointly and severally, hereby irrevocably authorize any Attorney-at-Law, Clerk of Court or Prothonotary to appear for Undersigned, after maturity jointly or severally, before any Justice of the Peace, or in any Court of Record, State or Federal, in the United States of America, in term time or vacation, and to waive issue and service of process and confess judgment against the Undersigned, jointly or severally, in favor of the holder hereof for such amount as may appear to be unpaid hereon, after maturity, together with interest and fifteen per cent. (15%)

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478

Plaintiffs' Exhibit 2.

of the amount appearing unpaid hereon for collection expenses and attorney's fees, and to release all errors and waive all right of appeal.

All benefits of valuation, appraisement, homestead and other exemption laws now in force, or hereafter passed, including stay of execution and condemnation, are hereby waived, where such waiver is permitted by law. Presentment, demand, protest, notice of protest and non-payment or dishonor, and notice of the sale of any collateral security, are hereby waived by all makers and endorsers hereof.

479

Value Received.

ROSEMARY PLATZMAN

LOUIS PLATZMAN (Seal)

(Endorsed)

Without Recourse

For value received, pay to the order of
Commercial Credit Corporation

MAB MOTORS, INC.

By Meyer M. Lasker

(Original)

480

New York City, NY October 30/37

CONDITIONAL SALE AGREEMENT

To MAB MOTORS INC. 1892-1st Ave., NYC. NY.
hereinafter called Seller.

From LOUIS & ROSEMARY PLATZMAN, 1988 Newbold
Ave., NYC. NY. hereinafter called Purchaser.

Purchaser hereby acknowledges delivery and acceptance of the following described Motor Vehicle

Plaintiffs' Exhibit 2.

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together with equipment (herein called "Car") in its present condition, after thorough examination, which Purchaser buys and Seller sells for the time price and on the following terms and conditions:

Car will be kept at.....

Make	Serial No.	Motor No.	Model	Year
DODGE	8127080	T23-26110	Com'l	1936

New or Used	Will Car Be Used For Pleasure, Business, Taxicab or Hire?	Type of Body	Truck Tonnage
Used	Business	Panel	1/2 ton
		116 inch W.B.	

482

CASH PRICE

Total Cash Price..... \$450.00

TIME PRICE

Cash on or Before Delivery..... \$ 25.00

Allowance on Car Traded in..... \$125.00

Make: 1932 Chevrolet Cabrl.

Total Down Payment..... \$150.00

A note payable in Twelve equal monthly instalments of \$30.00 each commencing one month from date hereof, given by Purchaser to Seller as evidence, but not as payment of a balance owing. The aggregate amount of monthly instalments plus the down payment is the total price of the Car.

483

Title to said Car shall remain in Seller until all amounts due hereunder are fully paid in cash, and

485

if stated above that Purchaser resides in the State of New Jersey, it is hereby agreed that upon performance by the Purchaser of the terms and conditions of this contract, Seller will deliver to Purchaser the title papers executed in connection with said Car, with proper evidence of the satisfaction of this contract, all in accordance with Chapter 166, New Jersey Laws, 1931. Said note or this contract may be negotiated or assigned or the payment thereof renewed or extended without passing title of said Car to Purchaser. The loss, injury or destruction of said Car shall not release Purchaser from the payment of said note. *Said note is a negotiable instrument separate and apart from this contract even though at the time of execution it may be temporarily attached hereto by perforation or otherwise.*

486

Said Car shall not be used for taxicab purposes or for hire unless otherwise mentioned herein. Purchaser shall not remove or attempt to remove said Car from the county and state given above as Purchaser's address without the written consent of the Seller. Purchaser shall not sell, lend, mortgage, assign, encumber, secrete, lose possession of or dispose of said Car or this contract or any interest therein. Purchaser shall pay all taxes and fees of every nature in connection with said Car. Purchaser shall not suffer or permit any lien, encumbrance or charge against or upon said Car. Purchaser shall not use or permit said Car to be used contrary to any laws in respect to intoxicating liquors, narcotics or other products and shall conform with all laws governing said Car.

In any state where Certificates of Title are issued, Purchaser in application therefor shall make

reference to Seller's rights under this contract and, if permitted by law, Purchaser shall deliver or cause to be delivered any such Certificate to Seller when received.

Purchaser shall keep said car insured against fire and theft, payable to and protecting Seller for not less than the total amount owing on said note until fully paid. Purchaser will keep said car insured against the collision hazard, if required to do so by Seller. Seller may place any or all of said insurance at Purchaser's expense, if Seller so elects. Seller may cancel any or all of such insurance at any time and shall receive the return premium, if any, therefor.

488

If Purchaser should fail to pay said note or any instalment thereon, or breach this contract, or if any insurance company should cancel or give notice of intention to cancel as against Purchaser any policy against the hazards of fire and theft to said Car, or if any execution, attachment or other writ should be levied on any of Purchaser's property, or if a petition under the Bankruptcy Act or any Amendment thereof should be filed by or against Purchaser or a receiver of the property of Purchaser should be appointed or if for any other reason Seller should deem itself or said Car insecure, the full amount of the purchase price then unpaid, shall become immediately due and payable at Seller's option, together with a reasonable attorney's fee, and Seller or his representative may take possession of said Car and all equipment, accessories or repairs thereon which shall be considered a component part thereof, wherever it may be found, and may enter any premises therefor without notice or demand to Purchaser and without legal process, and Purchaser waives all claims for damages

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491

492

caused thereby, and the holder of said note may declare it due and payable. While removing said Car from point of repossession to Seller's place of storage, Seller may use Purchaser's license plates. Said Car may be retained by Seller, if Seller is the holder of said note, together with any and all amounts paid thereon which shall be considered for the reasonable use of said Car, and Purchaser shall pay to Seller any costs for necessary repairs because of damages to said Car; or said Car may be sold at private or public sale without being at the place of sale, and with or without notice to Purchaser, and Seller shall have the right at any public sale to purchase said Car the same as any other person, and all laws governing such sale are hereby waived by Purchaser. Such private or public sale may be held before any judgment in any repossession suit. The proceeds of any sale, after deducting expenses, liens, storage and an attorney's reasonable fee paid or incurred by the Seller shall be applied to the amount due on said note and the surplus, if any, shall be paid to Purchaser; and in case of a deficiency, Purchaser covenants to pay forthwith the amount thereof to the holder of said notes and does hereby authorize any attorney to appear in any Court of Record of the United States, except in the States of Indiana and New Mexico, and confess judgment in the amount of such deficiency against Purchaser in favor of Seller and waive the issue of process and all right of appeal. Purchaser waives all homestead and other property exemption laws. Seller may take possession of any other property in the above described motor vehicle at the time of repossession and hold the same temporarily for the purchaser without any responsibility or liability on the part of the Seller or its assigns.

Plaintiffs' Exhibit 2.

493

Any action to enforce payment of said note shall not waive or affect any of Seller's rights hereunder. Any indulgences granted Purchaser shall not be considered a waiver of any rights of Seller. Time is the essence of this agreement. Any part of this contract contrary to the laws of any state shall not invalidate other parts of this contract in that state. The term Seller shall include persons or parties to whom Seller's title and rights under this contract may be assigned and all rights and remedies hereunder are cumulative and not alternative. Purchaser acknowledges the receipt of a true executed copy of the contract at the time of the execution hereof.

494

This agreement constitutes the entire contract and no waivers or modification shall be valid unless written upon or attached to this contract, and said Car is accepted without any express or implied warranties unless written hereon at the date of purchaser.

This agreement shall apply to, inure to the benefit of, and bind the heirs, executors, administrators, successors and assigns of the Purchaser and Seller.

IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their seals to this contract.

495

MAB MOTORS INC. (Seal)

MEYER M. LASKER (Seal)

ROSEMARY PLATZMAN (Seal)

LOUIS PLATZMAN (Seal)

496

Plaintiffs' Exhibit 2.

Witnesses:

LUCY COHEN

MEYER M. LASKER

IMPORTANT—PURCHASER READ BEFORE SIGNING

Purchaser sign here if Car is actually in your possession, but do not sign here unless you have actually received the Car, since by doing so you might place yourself in the position of being a party to a fraud.

Dealer Must Execute Assignment on Reverse Side

BUYER'S STATEMENT.

* * * * *

- 497 Undersigned will pay said note irrespective of any imperfections in the motor vehicle or any breach of alleged representations. You and/or your assigns are authorized to correct patent errors in said contract and other papers executed by undersigned in connection therewith.

ROSEMARY PLATZMAN

LOUIS PLATZMAN

DEALER'S REPRESENTATIONS AND ASSIGNMENT

1. Have you any reasons to believe Purchaser violates any laws concerning liquor or narcotics?
No.
- 498 2. Was this Purchaser's name ever rejected by any other Finance Company, Bank or Banker?
No.

FOR VALUE RECEIVED, Undersigned does hereby sell, assign and transfer to Commercial Credit Corporation, all of his, its or their right, title and interest in and to the contract on the reverse side hereof and the Car referred to therein, with power

to take legal proceedings in the name of the Undersigned or itself in respect thereto. Undersigned warrants that said contract is genuine and in all respects what it purports to be; that the down payment made by the Purchaser as stated in the contract was in cash and not its equivalent, unless otherwise mentioned in the contract, and that no part thereof was loaned directly or indirectly by Undersigned to the Purchaser; that Undersigned had a title free and clear of all encumbrances at the time of the execution of this contract by the Purchaser; that Purchaser is 21 years of age or older; that the answers by Undersigned to questions above are true and complete. Undersigned makes said warranties for the purpose of inducing Commercial Credit Corporation, to purchase the said contract and the note referred to therein; and if any such warranties should be untrue, Undersigned shall buy from Commercial Credit Corporation, upon demand said note and contract, and will pay therefor not less than the amount owing thereon plus any and all costs and expenses paid or incurred by Commercial Credit Corporation, in respect thereto, and said remedy shall be cumulative and not exclusive, and shall not affect any other right or remedy that Commercial Credit Corporation, might have at law or in equity against Undersigned.

Commercial Credit Corporation, is hereby authorized to correct patent errors in said contract and other papers executed, endorsed or assigned by Undersigned in connection therewith.

WITNESS the signature and seal of the Undersigned at 1892—1st Ave., NYC, NY.

October 30/37

MAR MOTORS INC.

(Seal)

MEYER M. LASKER

(Seal)

502

Plaintiffs' Exhibit 2.

Invoice No. U-4075

MAB MOTORS, Inc.

1892 First Avenue

New York, N. Y.

Tel. SAcramento 2-4700

2404 Grand Concourse

Tel. RAymond 9-3100

1700 Jerome Avenue

Tel. LUdlow 7-4200

1051 Lexington Ave.

Tel. BUtterfield 8-8613

Date: October 30/37

Sold to LOUIS & ROSEMARY PLATZMAN,

Address: 1988 Newbold Ave.,

Salesman:

New York City, N. Y.

P. Leeds

503

Ship to

Ship via

Make	Model	Serial No.	Motor No.
DODGE	Panel	8127080	T23-26110

Description	Amount
Used Car.....	450.00
Fire Theft Ins. & Finance Charges.....	60.00
Sales Tax	6.50
Total Sale.....	516.50

SETTLEMENT

501

TAX 6.50

Cash on Delivery.....

Previous Deposit..... 25.00

Used Car—1932 Chev..... 125.00

Type: Cabriolet

Serial No. 2BA0449143

Motor No. 3200855

Commercial Credit Notes: 12 @ 30.00.. 360.00

Total..... 516.50

Plaintiffs' Exhibit 2.

505

**30 Day Guarantee for Defective Parts Only
Labor Extra**

There is no warranty or representation by the seller as to the mileage or extent of use of the said motor vehicle, regardless of the mileage, if any shown on the speedometer.

Plaintiffs' Exhibit 3.

**ORDER FOR
DODGE MOTOR VEHICLE**

Dealer: MAB MOTORS INC.
City: 1700 Jerome Ave.

506

Please enter my order for one Dodge R. C. Commercial Panel—Blue—1 Seat

Delivered Price	\$749.25
Special Equipment—	
Fire & Theft Only	16.35
Interest	45.00
Filing Fee	1.25
N. Y. City Tax	6.99

Total Price, not including finance
charge, to be paid as stated below **\$818.84**

507

Initial Cash Deposit herewith	\$ 10.00
My used 1936 Dodge Panel—\$400 Less amt. due CCC 146.52—Serial No. Engine No. which I will deliver to you (as initial or part payment) free from incumbrance on (Date) in the same condition and with the same equipment as when appraised by you—	
Net Equity	\$253.48

Cash Payment due on delivery of new vehicle to me.....	\$ 15.36
Deferred balance including finance charge (for which I agree to give you promissory notes secured by chattel mortgage, conditional sale contract hire-purchase agreement, or otherwise as you may determine) to be paid in 18 monthly payments of \$30 each commencing one month after delivery.....	\$540.00
CCC Total	<u>\$818.84</u>

509

Delivery of new vehicle to be made on or about the.....day of.....19....

Remarks: All orders subject to Managers approval.

I have read the conditions and warranty printed on the reverse side hereof and agree to and accept them as part of this order the same as if they were printed on this side of this order and above my signature.

This order contains the entire agreement affecting this purchase, and no other agreement, understanding, representation or warranty of any nature concerning same has been made or entered into or is a part of this transaction.

510

I hereby acknowledge receipt of a duplicate copy of this order.

Date signed: Jan. 18, 1938.

Purchaser: ROSEMARY PLATZMAN
LOUIS PLATZMAN

Street Address: 1988 Newbold Ave.

Occupation

City.....State.....

Salesman: H. J. ANDERSON

Accepted

(Dealer)

Per

Date Accepted

Date New Vehicle Delivered.....193....

Serial No.....Motor No.....

CONDITIONS

1. If the new vehicle is not delivered or tendered for delivery by the Dealer within thirty (30) days after the specified delivery date, Purchaser shall have the right to cancel this order. In such event Dealer's liability for any delay in delivery or for any failure to deliver shall be limited to the return to Purchaser of any cash payments and/or any used vehicle delivered to Dealer as initial or part payment, Dealer to have the option either to return the used vehicle to Purchaser or to pay Purchaser for it on the basis set forth below in Paragraph 3 hereof.

512

2. If Dealer's regular selling price for the type of vehicle ordered is changed before delivery to Purchaser, Purchaser agrees to pay the new price or consent to the cancellation of this order upon the return of Purchaser's cash payment and/or any used vehicle delivered to Dealer as initial or part payment, Dealer to have the option either to return the used vehicle to Purchaser or pay Purchaser for it on the basis set forth below in Paragraph 3 hereof.

513

3. It is expressly agreed that, in the event that this order should be cancelled pursuant to Para-

graph 1 or Paragraph 2 hereof, any used vehicle which may have been received by Dealer as initial or part payment of the purchase price of the new vehicle and sold by Dealer previous to such cancellation, shall be accounted for by Dealer at the price at which the used vehicle was sold less all expenses and charges for repairs and reconditioning, storage, handling and selling, and not at the price which Dealer may have agreed to allow for the used vehicle if the new vehicle ordered herein had been duly delivered to and accepted by Purchaser.

515

4. If full payment for new vehicle is not made within thirty days after notification that same is ready for delivery, Dealer may cancel this order and it is agreed that the advance deposit or proceeds of sale of used car taken in trade, as the case may be, may be retained by Dealer up to twenty per cent of the sales price of new vehicle ordered, or if used car has not been disposed of, Dealer shall have a lien thereon for such amount. Such retention of funds or lien shall constitute liquidated damages for Purchaser's failure to complete full payment. Dealer may, at its option, return such funds or used car and hold Purchaser liable for Dealer's loss or damage by reason of Purchaser's failure to complete such payment within thirty days.

516

5. Dealer shall be under no obligation to incorporate in the motor vehicle ordered any change or improvement incorporated in any other Dodge motor vehicle or to make any allowance on account of any such change or improvement.

Plaintiffs' Exhibit 3.

517

6. Any part or parts subject to replacement by the factory in accordance with the warranty printed below will be installed by the Dealer without charge for labor to the owner.

7. This order shall not constitute a contract until accepted in writing by Dealer or his authorized representative; and when so accepted is not transferable by Purchaser and can be transferred by Dealer only to another authorized Dodge Dealer.

8. Purchaser hereby certifies that he is twenty-one years of age and of full legal capacity to enter into this contract.

518

519

520

Plaintiffs' Exhibit 4.*Two Bills.*

Telephone
TAlmadge 2-8406

Storage Payable
in Advance

PUGSLEY GARAGE & SERVICE STATION**STORAGE — ACCESSORIES — SUPPLIES****2014 Westchester Avenue**

Space being engaged for the entire month, no allowance will be made for absence for any part thereof.

Don't Forget—We Lubricate Cars by Modern Equipment
Day and Night Service

Bronx, N. Y., Feb. 15th, 1939**521 Sold to MR. PLATZMAN**

Address

Statement of Account for Month Ending.....

Date	Particulars	Charges
	Storage for the month of Feb.....	9.—
1/25	Nut .....	.35
2/7	Tire & Tube.....	2.75
2/12	.....	.35
		<hr/> 12.45 <hr/>

Paid G**522**

Cars operated by employees at owner's risk and responsibility.
Not responsible for loss or damage by fire or theft
or for articles left in cars.

Plaintiff's Exhibit 4

523

Telephone
TAlmadge 2-8406

Storage Payable
in Advance

PUGSLEY GARAGE & SERVICE STATION

STORAGE — ACCESSORIES — SUPPLIES

2014 Westchester Avenue

Space being engaged for the entire month, no allowance will be made for absence for any part thereof.

Don't Forget—We Lubricate Cars by Modern Equipment
Day and Night Service

Bronx, N. Y., Mar. 15th, 1939

Sold to MR. PLATZMAN

Address

524

Statement of Account for Month Ending

Date	Particulars	Charges
	Storage for the month of Mar.....	9.—
	12 Gals. Gasoline @ 6/1.....	2.—
	4 Qts. Oil @ 25.....	1.—
2/17	Flat .....	.35
2/20	" .....	.35
2/27	" .....	.35
3/1	Flat .....	.35
3/4	" .....	.35
3/10	" Sp. P.....	.50
		<hr/> 14.25
		1.75
		<hr/> 16.00

525

Cars operated by employees at owner's risk and responsibility.

Not responsible for loss or damage by fire or theft
or for articles left in cars.

Date	Gals. Gas.	Gals. Gas.	Spec. Gas.	Qts. Oil	Lbs. Grease
14	6	.....	.....	.....	.....

526

Defendants' Exhibit A for Identification.**APPLICATION BLANK****INITIATION FEE \$25****DUES**

	Amt. Paid	Date	Month	Amt.	Date Paid	Who Paid
Part	\$					
2	" \$					
3	" \$					
4	" \$					
5	" \$					
6	" \$					
7	" \$					
527 8	" \$					
Total	\$					
Ledger No.			Initiated			

(Seal)

LOCAL 138, I. B. OF T.**Headquarters: 251 West 42nd St., New York City****Telephone BRyant 9-2915-6-7****First Payment: March 17, 1938**

Desiring to become a member of the above Union of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers, I hereby make application for admission to membership.

528

Signature: HYMAN WOHL
Address: 740 Cauldwell Ave. Bx.
Occupation: Baker Jobber
Employed at 1467 St. Peters Ave.
Age: 33 Health: Good

Voucher: HYMAN BERNSTEIN**Note.—Initiation Fee must accompany Application.**

Defendants' Exhibit B.

529

APPLICATION PLANK**INITIATION FEE \$25****DUES**

	Amt. Paid	Date	Month	Amt.	Date Paid	Who Paid	
Part \$.....							
2	\$.....						
3	\$.....						
4	\$.....						
5	\$.....						
6	\$.....						
7	\$.....						
8	\$.....						
Total	\$.....						530
Ledger No..... Initiated.....							

(Seal)

LOCAL 138, I. B. of T.**Headquarters: 251 West 42nd St., New York City****Telephone BRyant 9-2915-6-7****First Payment: March 17, 1938**

Desiring to become a member of the above Union of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers, I hereby make application for admission to membership.

Signature: LOUIS PLATZMAN**Address: 1988 Newbold Ave. Bx.**

531

Occupation: Jobber**Employed at 1467 St. Peters Ave.****Age: 24 Health: Good****Voucher: H. BERNSTEIN**

Note.—Initiation Fee must accompany Application.

Defendants' Exhibit C.

Constitution and By-Laws of the International
Brotherhood of Teamsters, Chauffeurs, Stablemen
and Helpers of America.

Constitution and By-Laws
of the
International
Brotherhood of Teamsters
Chaufeurs, Stablemen
and Helpers
of America



Affiliated with the American Federation of Labor
Adopted at the Convention held in Portland, Oregon,
September 9th to 13th, inclusive, 1935
In full force and effect on and after December 1, 1935

CONSTITUTION AND BY-LAWS

OF THE

**International
Brotherhood of Teamsters
Chauffeurs, Stablemen
and Helpers
of America**



Affiliated with the American Federation of Labor

**Adopted at the Convention held in Portland, Oregon,
September 9th to 13th, inclusive, 1935**

In full force and effect on and after December 1, 1935

PREAMBLE

As almost every improvement in the condition of the working people was accomplished by the efforts of organized labor, and as the welfare of the members of a craft can best be protected and advanced by their united action in one great labor organization, we have organized the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers, under the American Federation of Labor, and adopt the following constitution:

CONSTITUTION

OF THE

International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers

NAME

Section 1. This organization shall be known as the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers and shall consist of an unlimited number of Local Unions chartered by the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers.

OBJECTS

Sec. 2. To organize under one banner all workmen engaged in the craft, and to educate them to co-operate in every movement which tends to benefit the organization; to impress upon the teamsters, chauffeurs and the public that a profitable teamster, chauffeur or stableman must be honest, sober, intelligent and naturally adapted to the business; to teach them to take advantage of their industrial position and to build up and perfect an impregnable labor organization; to improve the industry by increasing the efficiency of the service and creating a feeling of confidence and good will between employer and employee which will prevent a recurrence of the unnec-

essary conflicts which have arisen in the past and to co-operate and deal fairly and honestly with all employers who are willing to investigate and adjust difficulties which may arise, and to secure for the teamsters, chauffeurs, stablemen and helpers reasonable hours, fair wages and proper working conditions.

JURISDICTION

Sec. 3. This organization has jurisdiction over all teamsters and helpers, chauffeurs and helpers, stablemen and all who are employed on horses, harness, carriages or automobiles, in and around stables or garages, other than mechanics. Dairy employees are classified as helpers and are eligible for membership.

Sec. 4. No person shall be entitled to membership in this organization who owns or operates more than one team or vehicle. The General Executive Board, when they deem it advisable or for the best interest of our International Union and upon the recommendation of the Local Union, may allow a man to own more than one team or vehicle and hold membership, provided that he hires or employs none but members of our International Union and that he drives a vehicle himself and pays the driver the prevailing rate of wages in the locality.

Any man owning and operating but one team or automobile is entitled to membership in our organization. This will also permit the owner of one team or automobile to hire a helper in case he is sick or disabled or working for his Local Union or for the International

Union. He may get a substitute to work for him, but the substitute must be a member of the International Organization. Individual owners shall not be permitted to vote on a strike involving journeymen, nor shall they be permitted to vote on wages and working conditions of journeymen drivers, chauffeurs, or helpers.

Any member of the International Organization going to work at another craft must be given an honorable withdrawal card, and cannot remain a member of the International Organization.

Any ex-member out on withdrawal card and working under the jurisdiction of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers must re-deposit his withdrawal card with the local from which it was issued and transfer into the Local Union under whose jurisdiction he is working, if one exists in the city in which he is employed. Failure to comply with this rule cancels his withdrawal card.

Local Unions are not compelled to accept withdrawal cards if member has committed any offense while out on withdrawal card which would be injurious to union principles. Also if local union is paying benefits and member has fallen into bad health or is liable to become a charge against the local or International Union, acceptance of withdrawal card can be refused by Local Union.

Any Local Union of the International Brotherhood of Teamsters, Chauffeurs and Stablemen, who by their charters have been granted jurisdiction over teamsters of any craft, shall

also have jurisdiction over all chauffeurs working at the same craft.

To be eligible for election to any office of Local Union or International Union a member must be in continuous good standing for a period of one year prior to nomination for said office. This does not apply to newly organized local unions except as follows: Local Unions organized for less than one year an individual must be a member and in continuous good standing for at least half of the period of time since local union was chartered by International Union. To be eligible to hold office in a Local Union a member must be a citizen of the country in which his Local Union is located.

No member of the Communist Party shall be allowed to hold membership or be admitted to membership in any Local Union of the International Organization. If by false statements such individual has obtained membership he shall be expelled. It is not necessary that the individual charged with membership in the Communist Party admit his membership in said party. If the Local Union Executive Board, by majority vote, are satisfied by the evidence presented that the individual is a member of the Communist Party or any branch of the Communist Party, the Local Executive Board shall have the power to expel such individual after he has obtained a proper trial in accordance with our laws, from the Local Executive Board.

The action of the Local Executive Board is final and binding, with the understanding that either party has the right to appeal to the Joint Council if one exists in the district. If

there is no Joint Council then either party has the right to appeal from the decision of the Local Executive Board to the International Executive Board. If charges are against a member of the Local Executive Board, said member cannot act as a part of the Trial Board, but a substitute shall be appointed by the Joint Council if there is one in the district. If not, the General President shall delegate someone to select a member from any Local Union in the district to act on the Local Executive Board.

CONVENTIONS AND REPRESENTATION

Sec. 5. The conventions of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers shall be held quinquennially on the second Monday in September, at such place as may have been designated by the last preceding convention, and no city shall be entitled to two consecutive conventions, nor shall a convention be held in any city or town where there is no Local Union of the International Brotherhood. The International Secretary-Treasurer shall issue a call for the convention not less than two (2) months prior to the date of meeting.

Sec. 6. Each Local Union having two hundred (200) members or less shall be entitled to one representative, and one delegate for each additional two hundred (200) members or majority fraction thereof, but in no case shall a delegate have more than one vote. No proxy vote will be allowed.

Sec. 7. No Local Union shall be entitled to representation in the convention that has not

been chartered, affiliated and in good standing for ninety days prior to the opening of the convention, and each Local Union to be entitled to said representation must have paid into the International treasury three consecutive months' per capita tax. No member shall be elected as delegate if in arrears to his Local Union.

This section applies also to Local Unions now affiliated with independent organizations.

Sec. 8. Each Local Union shall pay the expenses of its delegates to the quinquennial convention.

All moneys due the International Brotherhood, whether by per capita tax or otherwise, must be received at least three days prior to the opening of the convention.

ELECTION OF DELEGATES

Sec. 9. All delegates to the International convention shall be elected at the first regular meeting in July preceding the convention, or as soon thereafter as possible. The Local Union shall at the time of electing delegates elect also an alternate, to serve in case of disability of the regularly elected delegate. Each delegate or alternate must be an active member working at the craft. This, however, must not be construed so as to bar the election of salaried officers of Local Unions or officers of the International Union. All International Officers and Organizers who have worked continuously for one year or more shall be entitled to all the privileges of regularly credentialed delegates.

Sec. 10. The Recording Secretary of each Local Union shall, immediately after the election of delegates, forward their names to the General Secretary-Treasurer, who shall publish a list of delegates in the official Journal. Each delegate shall present credentials, properly signed by the President and Recording Secretary, having the seal of the Local Union he represents attached; also his card of membership, in order to prove that he is entitled to a seat in the convention.

All credentials, in order to be published in the official Journal, must be in the General Office thirty days prior to opening of convention.

Sec. 11. The General President shall, on or before September 1st, preceding each convention, appoint from the delegates-elect a committee of five, no two from any one state or province, to act as a committee on credentials. Said committee shall meet at the place of holding the convention three days prior to the opening of the convention. The General President and General Secretary-Treasurer shall be members of said committee. To this committee shall be referred all credentials. This committee shall have their report in writing ready for the convention when it opens.

Said committee of five shall receive as compensation for the extra three days' service the same remuneration for services as is paid to the Executive Board members and organizers, including regular hotel expenses.

Sec. 12. Prior to each convention, Local Unions, members in good standing, or the Gen-

eral Officers shall have the right to send to the General President of the International Union, proposed amendments or additions to the constitution, or resolutions, which shall be submitted to the Committee on Constitution when it meets. All propositions received in time shall be published in the official Journal. This shall not deprive delegates to the convention of their right to propose amendments or additions to the constitution, or to submit resolutions during the sessions of the convention.

Sec. 13. A quorum shall consist of a majority of the delegates seated in the convention.

OFFICERS AND ELECTIONS

Sec. 14. The officers of the International Brotherhood shall consist of a General President, General Secretary-Treasurer, seven Vice-Presidents, and three Trustees. The General President, seven Vice-Presidents and Secretary-Treasurer shall constitute the General Executive Board.

Not more than two officers from any one city can be elected to hold a position entitling him to a seat on the Executive Board. The officers of the International Union shall be uniformly distributed throughout the entire country.

Sec. 15. The election shall be left to a Committee on Rules appointed by the President of the convention, and all officers shall be installed on the last day of the convention and assume their official duties on December 1, fol-

lowing the adjournment of the convention. All nominations for International Officers shall be made in open convention and elections shall be by roll call. It shall require a majority of all votes cast to constitute an election; at every unsuccessful ballot the candidate receiving the lowest number of votes shall be dropped until an election takes place. This shall not apply to Trustees or American Federation of Labor delegates. Each delegate shall be entitled to vote for three candidates for Trustees and the number of American Federation of Labor delegates decided upon by the convention, and the candidate receiving the highest number of votes shall be declared elected.

Sec. 16. At each convention of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers, there shall be elected as many delegates to the American Federation of Labor conventions as the membership of the International Union permits. Said delegates shall make a full report of said convention to the General Executive Board in writing; to the general membership through the official Journal within sixty (60) days.

The expenses of the above delegates shall be paid by the International Union, the amount to be determined by the General Executive Board, with railroad fare to and from the convention by the shortest route, and no longer time shall be consumed than is necessary to make the trip. The General President and General Secretary-Treasurer shall act as delegates to the convention of the American Federation of Labor by virtue of their offices. The unit

rule shall prevail in all cast and votes amongst the delegates representing the International at the American Federation of Labor and Department conventions.

OFFICERS, SALARIES AND EXPENSES

Sec. 17. Salary of the General President, \$20,000 per year; salary of the General Secretary-Treasurer, \$20,000 per year.

In the event that the General President or General Secretary-Treasurer are compelled to leave their office for any reason of health, that they be continued as advisors to the organization and that their remuneration be the same as set forth in the constitution.

The seven Vice-Presidents and three Trustees shall receive the same pay as Organizers while working under orders from the General President.

The Organizers shall receive \$12,000.00 per year while working under orders from the General President. All Executive Officers, Organizers and others working outside of their home city or when traveling in the interest of the organization, shall receive their railroad fare in addition to the above named sum to and from their destination by the shortest route, and in addition shall receive a sum not to exceed \$12.00 per day for hotel expenses.

The General President, General Secretary-Treasurer, Organizers and other Executive Officers of the International, shall be allowed \$5.00 per day for incidental expenses. All Special Organizers' salaries and expenses shall

be determined by the General President, subject to the approval of the General Executive Board.

All salaries shall be determined by the convention prior to election of officers.

DUTIES OF OFFICERS

—General President—

Sec. 18. The General President shall preside at the convention of the International Brotherhood and conduct the same in conformity with this constitution. He shall have the deciding vote in case of a tie on any question that is being voted on by the convention, and shall act to the best of his ability in furthering the interests of the organization. He shall fill any vacancy among the General Officers, by consent of the majority of the General Executive Board.

Séc. 19. The General President shall have general supervision over the affairs of the International Brotherhood, which shall be conducted in accordance with the constitution and the approval of the General Executive Board.

The General President shall devote his entire time to the service of the International Brotherhood and shall receive such compensation as may be determined at each quinquennial convention.

Sec. 20. He shall decide on all points of law or grievances submitted to him by Local Unions, subject to appeal to the General Executive Board or next convention.

He shall have charge of the conduct of strikes and lockouts, in conformity with this constitution.

Sec. 21. The General President shall assist and advise Local Unions, draft agreements when called upon, and approve local by-laws.

Sec. 22. He shall countersign all checks drawn on the International Treasury by the General Secretary-Treasurer in accordance with Section 31 of the constitution, approve all bills for services rendered the International Brotherhood, and give bond to the General Executive Board for the faithful performance of his duties, in such amount as may be determined upon by the General Executive Board.

Sec. 23. The General President shall employ a public expert accountant to audit the books of the General Secretary-Treasurer on the 1st of March, June, September and December.

Sec. 24. The General President, with the consent of the General Executive Board, shall at all times have the power to remove any officer or organizer who is not competent to perform the duties assigned to him.

Sec. 25. The official Journal shall be published under the supervision of the General President, subject to the approval of the General Executive Board, and a copy of the same furnished direct to each financial member who may furnish his name and address to the General President through the Local Secretary-Treasurer. The General President shall be em-

powered to employ such help as he may need to carry on this work.

It shall be compulsory upon the Local Secretary-Treasurer to send in the name and address of every member in good standing to the office of the General President, quarterly, in order that the members may receive the magazine and keep the mailing list revised at all times.

Sec. 26. The First Vice-President shall assume the duties of the President in case of death, disability or resignation of that officer until such time as the General Executive Board shall select a General President, who shall hold office until the next convention.

GENERAL SECRETARY-TREASURER

Sec. 27. The General Secretary-Treasurer shall keep a correct record of the proceedings of the convention, preserve all important documents, papers, letters received and copies of all important letters sent by him. He shall conduct all financial correspondence between the International Brotherhood and the Local Unions. He shall be custodian of all the property of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers.

Sec. 28. Application for charters shall be made to the General Secretary-Treasurer, who shall sign, issue and deliver a charter to the Local Union upon receipt of the following contract, which must be signed by the Secretary-Treasurer of the Local Union.

CHARTER CONTRACT

Know all men by these presents, that I,.....

....., Secretary-Treasurer of the.....

....., Local, located at.....

....., being authorized to act for said

Local, in consideration of the General Secretary-Treasurer issuing a charter to said Local,

hereby agree: That said charter shall remain

the property of the International Brotherhood

of Teamsters, Chauffeurs, Stablemen and Help-

ers; and in consideration of the premises here-

in stated, agree that when charter is framed,

the frame shall immediately become the prop-

erty of the International Brotherhood of Team-

sters, Chauffeurs, Stablemen and Helpers. Said

Local Union shall have custody of said charter

until it is demanded by some person authorized

to make such demand by the General Execu-

tive Board; and the charter and frame shall

then be delivered to the person authorized by

the General Executive Board to demand and

procure the same; and it is further agreed that

any person authorized by the General Execu-

tive Board may enter any premises occupied

by the said Local or any of its members and

take possession and remove the said charter.

.....
By its Secretary-Treasurer.

Sec. 29. The General Secretary-Treasurer

shall publish a financial statement and furnish

the Secretary-Treasurer of each Local Union

with a copy of same, together with a state-

ment of an expert accountant, showing the

total amount of receipts and disbursements with the cash balance on hand. He shall also furnish the Secretary of each Local Union with a revised roster showing the number of Unions in good standing at his discretion. At any time a financial report is demanded by two or more Local Unions, the General Secretary-Treasurer shall give the Locals asking for same the correct amount of money on hand in the International Treasury and in the strike or general fund.

Sec. 30. The General Secretary-Treasurer on sending out credentials, shall figure from July 1, 1935, to July 1, 1940, to get the per capita tax stamps bought by Local Unions and the number of delegates given to Local Unions shall be upon this basis.

Sec. 31. The General Secretary-Treasurer shall receive all moneys due from Local Unions and other sources, giving his receipt therefor. All moneys shall be placed in the bank in the name of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers, except otherwise ordered by the General Executive Board, in accordance with Section 46, subject to withdrawal only by the General Secretary-Treasurer and the General President, with the exception of five thousand dollars (\$5,000), which shall be deposited subject to withdrawal by check on the signature of the General Secretary-Treasurer for the purpose of paying current expenses. He shall keep a correct financial account between Local Unions and the International Brotherhood.

It shall be the duty of the General Secretary-Treasurer to notify the Recording Secretary or the President of the Local Union when said Local Union becomes in arrears for per capita tax.

Sec. 32. The General Secretary-Treasurer shall receive such compensation as shall be determined by the convention, and he shall give bond to the General Executive Board in such amount as they deem proper for the faithful performance of his duties.

Sec. 33. The General Secretary-Treasurer shall procure all seals, stamps and supplies and furnish same to all Local Unions desiring them. (It is compulsory for all Local Unions to procure all supplies from the General Office with the exception of letter paper and envelopes.)

Individual members or Locals shall not have the power to duplicate the stamps, buttons or paraphernalia issued by the International Brotherhood. Permission may be granted by the General Executive Board to Local Unions to have stationery and other minor supplies procured in their several localities. The General Secretary-Treasurer shall perform such other duties as are required of him by this constitution.

Sec. 34. The General Secretary-Treasurer shall issue the password quarterly.

Sec. 35. The General President, General Secretary-Treasurer and First Vice-President

of the International Brotherhood shall have the power to call a meeting of the General Executive Board whenever, in their judgment they deem it necessary.

Sec. 36. The General President and General Secretary-Treasurer shall have the power to employ such clerical assistance as may, from time to time, be necessary. Such help shall be paid reasonable salaries from the general fund, all of which shall be subject to the approval of the General Executive Board.

TRUSTEES

Sec. 37. The Trustees shall audit the books of the General Secretary-Treasurer on the first of March and September of each year, and report their findings immediately to the General President, and the General President shall, in turn report to the General Executive Board.

Sec. 38. The fiscal quarters of the year shall commence on the first of March, first of June, first of September and first of December.

GENERAL EXECUTIVE BOARD

Sec. 39. Should the General Executive Board recommend any new laws for the benefit of the International Brotherhood to Local Unions three months prior to the opening of the convention, and should the recommendation be supported by a two-thirds vote of the members of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers, it shall be adopted by the convention.

Sec. 40. If the General Executive Board, when in session, receive information which leads them to believe that any of the officers of a Local Union are dishonest or incompetent, or that the organization is not conducted for the benefit of the entire membership, they shall investigate, and, if they deem it advisable, suspend any or all officers and appoint temporary officers who shall have all the duties, powers and liabilities of regularly elected officers of Local Unions, to take their places until the Local Union is put in proper working condition; or they may appoint a Trustee, revoke the charter and form a new Local Union in the same jurisdiction.

The suspended officers shall turn over all the money, books or property of the Local Union to the temporary officers, who must receipt for the same.

Temporary officers and trustees must be members in good standing of Local Unions in good standing. They must give bonds for the faithful discharge of their duties, satisfactory to whoever appointed them, which shall not be less than the amount of money they are apt to handle.

The Trustee shall seize all the funds, books, papers and other property of the Local Union and tender a receipt for the same. He shall pay all outstanding claims properly proved, if the funds are sufficient; if the funds are not sufficient he shall settle the most worthy claims; but if there is any balance to the credit of the Local Union he shall forward it to the General Secretary-Treasurer, who shall hold it

in trust, and if another Local Union is formed within sixty days, having the same jurisdiction, and one-half of the members were members of the former Local Union, it shall be given the fund held in trust by the General Secretary-Treasurer, otherwise the fund shall go to the International Treasury.

Sec. 41. The General Executive Board, upon information received, shall have power to debar any member who was dishonest or disloyal in the organization whose charter was revoked, from membership in the new Local Union for a term of six months. The General Executive Board shall have the power to appoint a receiver over any Local Union to take charge of the financial business of such Local Union as long as, in their judgment, they deem it necessary, whenever they have reason to believe that Secretary-Treasurers of Local Unions are not acting honestly with the International organization or are attempting to cover up their shortages, or whenever they believe they are hiding the business of their Local Union from the International by destroying books or in any way acting dishonestly and not in the best interests of their membership.

Sec. 42. Any Local Union suspended by the General Executive Board shall lose, for the period of its suspension, all privileges of the International Brotherhood, and the local central labor body shall be notified to exclude its delegates.

The General President, or General Secretary-Treasurer when they deem it necessary to

revoke a charter shall immediately notify the members of the General Executive Board, for their sanction of same. This is in cases where Local Unions refuse to obey the laws of the International Brotherhood of Teamsters, either by non-payment of per capita tax, or for any other cause.

Sec. 43. Any Local Union whose charter has been revoked by the International Brotherhood shall lose its rights therein forever, and its officers, if found guilty, shall not be eligible for membership in any local of the International Brotherhood for a period of six months from the date of suspension. Immediately after the revocation of the charter of a Local Union, the organizers for the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers shall organize a new Local Union, and shall give it a new charter, but a different number from that held by the one whose charter has been revoked. That in case of such suspension a receiver be immediately appointed by the General President or General Secretary-Treasurer.

Sec. 44. Any member or number of members of a Local Union assaulting or injuring a General Officer, or Organizer, shall be tried by the General Executive Board. He shall be notified of the trial and sent a copy of the charges. If he is found not guilty, his expenses to the place of the board meeting shall be paid by the General Office. If he is found guilty he shall be disciplined as the judgment of the board dictates, and his expenses shall not be

paid. If he desires not to attend his trial, he may submit his answer or defense in writing to the board. A majority of the General Executive Board finding the individual guilty has the power to fine, suspend or expel the member. This section has precedence over Section No. 45.

Sec. 45. In the case of an individual, the accused shall be notified through his local Secretary-Treasurer, and shall have a reasonable time granted him to prepare and present a defense to the Executive Board of his Local Union. The Executive Board of his Local Union shall give the accused a fair hearing and shall render a verdict in accordance with the testimony presented. If found guilty, he shall be given a reasonable time to comply with the verdict.

All members shall be entitled to an appeal against the findings of the local Executive Board to the local Joint Executive Council, where one may exist.

Any Local Union refusing to try its members when charges have been preferred by another Local Union, for any cause whatsoever, the Local Union preferring the charges can at once bring the charge to the Joint Council for its decision.

All fines levied by the Executive Board of the Local Union, or the Joint Executive Council, shall revert to the Local Union of which the accused is a member. In the event of not complying with the verdict handed down by the Joint Executive Council, the member shall stand suspended from all privileges of the In-

ternational Brotherhood until the provisions of the verdict have been complied with.

Where no Joint Executive Council exists the accused shall have the right to appeal to the General Executive Board, but the findings of the Local Joint Council, as handed down, shall be final and binding.

Sec. 46. If charges are preferred against a Local Union, the Secretary-Treasurer of said Local shall be furnished a copy of the charges by registered letter and the Local Union shall be given a reasonable time to prepare and present a defense to the Joint Council. Should a fine be assessed against a Local by the Joint Council, and the Local desires to appeal to the General Executive Board, said fine must be paid into the International Treasury before the appeal can be taken, or should a Local desire to appeal to the International convention, the fine must be deposited with the General Executive Board; when the Local Union will be permitted to continue in the full rights and privileges of the International Brotherhood, subject to its laws thereof, pending the final decision of the convention. Should the convention decide in favor of the appeal, the deposit shall be returned, otherwise the same shall be converted into the general fund.

INITIATION FEES, PER CAPITA TAX, ETC.

Sec. 47. The revenue of the International Brotherhood shall be derived as follows:

Organization fee, which includes seal and all other organization supplies, \$15.

From the sale of supplies to Local Unions and from the sale of stamps of the following denominations: Initiation stamps, which are \$1.00; monthly due stamps (per capita), 30 cents.

General Executive Board shall appoint a Finance Committee of three members including the General President, General Secretary-Treasurer and the third to be named by the General Executive Board who shall have power to invest the funds of the International Union.

Provided, That not more than \$50,000 be invested in bonds of any one corporation, that securities purchased be kept in safe deposit box or boxes which shall only be opened in the presence of two members of the Finance Committee, further

That the International Union keep on hand not less than \$500,000 to meet any emergency that may arise. The Finance Committee shall furnish a Surety Bond payable to the Trustees of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, in the sum of \$100,000 each, the premium to be paid by the International Union.

Sec. 48. Each Local Union shall pay to the General Secretary-Treasurer the sum of One Dollar (\$1.00) for every initiation fee or equivalent collected, and a per capita tax of 30 cents per month, payable for the current month, not later than the 10th day of the succeeding month.

All reinstatement fees paid into the Local Union shall be figured as monthly dues and that the per capita tax must be paid on the

same. The General Secretary-Treasurer shall receipt for all initiation fees and per capita tax by giving stamps of the above-named denomination. All moneys received in the International Office shall be equally divided between the special and general fund.

Whenever the funds of the International Union run below two hundred and fifty thousand dollars (\$250,000.00) the General Executive Board shall levy an assessment of 50 cents per member on all Local Unions. Any Local Union failing to pay the assessment shall not be entitled to any of the benefits of the International organization. After being properly notified and given a reasonable length of time, if the Union further refuses to pay the assessment, said Local shall be suspended. Any Local Union failing to pay the assessment shall not be represented at the International Convention.

No Local Union shall have any right to pay any bills before they pay the per capita tax due to the International Union each month. The per capita tax to the International Union must be paid by every Local Union before any other bills are paid.

Sec. 49. No other system or receipting for initiation fees, monthly dues or reinstatement fees will be recognized by the International Brotherhood.

Sec. 50. Any member paying his initiation fees, monthly dues or reinstatement fees shall purchase stamps from the Local Secretary-Treasurer, who shall carefully paste the same on the space provided for in the member's official due card, and cancel the stamps with the

dater provided for this purpose (on the date the initiation fees, monthly dues, or the reinstatement fees are paid) and said stamps shall at all times be acknowledged as a receipt for payment in full for all amounts, as designated by the stamps.

Any Local Secretary-Treasurer refusing to stamp the members' due books according to the amount of dues paid shall be liable to expulsion when the General Executive Board takes such action. Any member refusing to turn in his due book shall be liable to a fine or suspension upon his Local Executive Board taking such action.

All members paying dues to Local Unions must pay them on or before the first day of the month, in advance.

Sec. 51. All orders for stamps or supplies must be made on the regular official order blank and have the seal of the Local ordering same attached, and all money sent to the General Secretary-Treasurer must be sent by post-office or express money order, certified check or draft.

Sec. 52. Each Local Secretary-Treasurer shall forward to the General Secretary-Treasurer a list of names and addresses of all members of the Local Union, together with the standing of the individual members.

The Local Secretary-Treasurer shall forward monthly to the General Secretary-Treasurer the names of all members initiated or reinstated, together with those who become suspended for non-payment of dues or for any

other cause; also a correct list of those who take transfer or withdrawal cards, and shall promptly notify the General Secretary-Treasurer upon the death of any member.

The Local Secretary-Treasurer shall forward to the General Secretary-Treasurer the name of any member coming in on a transfer or depositing a withdrawal card. The penalty for violation of this section shall be expulsion from the Local and International Union. The Secretary-Treasurer shall read his report to the Local for approval at the first meeting in the month, and, at once, sign, seal and forward the same to Headquarters.

The General Secretary-Treasurer shall notify the Local Secretary to comply with the laws, and if he does not, that he be removed from office for the second offense.

Sec. 53. All Local Secretary-Treasurers and Business Agents, upon assuming office, shall immediately procure a suitable surety bond. Said bond must be procured from a company named by the General Executive Board, a copy of which shall be kept on file at the General Office. The original shall be retained by the Trustees of the Local Union. It will be compulsory upon the Trustees of all Local Unions to send a copy of their monthly audit to the General Secretary-Treasurer, to be placed on file in the General Office. Books of all Local Unions must be audited monthly by Trustees.

Sec. 54. It shall be compulsory upon all Local Unions to keep their money deposited in reliable banks in the name of the Local Unions,

and all moneys paid out for the Local Union must be paid by check upon the order of the Local Union and signed by the proper officials.

Sec. 55. When the charter of a Local Union is revoked the Local Union shall be required to return all books, documents, property and funds due to the General Office of the International Brotherhood, and should a Local Union be dissolved, suspended or forfeit their charter, then all books, documents, property and funds due shall likewise be returned to the General Office to be held in trust until such time as the Local Union may be reinstated or reorganized.

Sec. 56. Any Organizer or officer of the International Union may be delegated, instructed and empowered to audit the books of any Local Union or Unions, by the General President, or General Secretary-Treasurer whenever they deem it advisable or necessary.

Local Union officers shall give the delegated officer for examination, all books, bills, receipts, vouchers and records of the local whenever requested.

Any officer of a Local Union refusing to turn over the books, bills, vouchers or records to the delegated officer shall be liable to expulsion by the General Executive Board.

Any member refusing to show his due card when asked shall be fined \$10.00.

If the officer delegated to audit the books discovers any dishonesty or incompetency in the officers which warrants him in notifying the General President and General Secretary-

Treasurer he shall do so and they shall take whatever action they deem advisable. The officers auditing books shall make a monthly report to the General President and General Secretary-Treasurer and shall have full power to go to any bank where a Local Union has its money deposited and investigate, also get a certified balance sheet from the bank.

The books of every Local Union that has been chartered over one year shall be audited between conventions.

Sec. 57. Should a Local Union become six months in arrears for per capita tax, their charter shall be revoked. The General Secretary-Treasurer shall notify all Local Unions when two months in arrears, but failure to receive such notice shall not prevent the suspension of the Local Union, should it become three months in arrears.

Sec. 58. Where the books of a Local Union have been examined and audited and arrearages to the General Office for per capita are found, same must be paid immediately. No per capita nor initiation stamps will be forwarded covering same, simply a receipt signed by the General Secretary-Treasurer covering the amount of per capita paid.

Sec. 59. The money in the defense fund shall be drawn for the following purposes:

To sustain legal strikes and lockouts and for the purpose of advancing and defending the principles of unionism, as applied to our craft, and to support and pay all legal bills

incurred in any strike called by the General Executive Board. The General Executive Board shall have the power to expend the money of the General Organization in any emergency that may arise in defense of the Local Unions in any district.

Sec. 60. When any difficulty arises between the members of any Local Union and their employers, the members shall lay the matter before their Local Union, and, if approved by the Union, the President shall appoint a committee to wait upon the employers and endeavor to adjust the difficulty; said committee shall report at the next regular or special meeting, and the Local Union shall then take such course as is prescribed in this constitution.

Sec. 61. If a settlement cannot be reached the Union shall, at a summons meeting, order a secret ballot to be taken, and it shall require a two-thirds majority of all members of the Union present to adopt a motion to strike. The ballot taken must be "Yes" or "No" written on paper ballots.

Sec. 62. Any Local desiring to present a wage scale to their employers shall first submit a copy of the same to the Joint Council, if one exists in their city. Should the same have the approval of the Joint Executive Council, it shall be compulsory upon the Local Unions to forward a copy of the wage scale to the General President for his sanction before the same shall be presented to any employer. The General President shall have the power to inquire

into the conditions surrounding the Local Union, and if, in his judgment, conditions do not warrant the presentation of the same, he shall immediately notify the Local Union of his decision in the matter. A copy of the wage scale must be in the hands of the General President at least thirty (30) days before presenting the same to the employers.

ANY LOCAL UNION GOING OUT UPON STRIKE WITHOUT THE CONSENT OF THE GENERAL EXECUTIVE BOARD SHALL NOT BE ENTITLED TO FINANCIAL BENEFITS FROM THE INTERNATIONAL BROTHERHOOD.

Sec. 63. Upon the General President endorsing the wage scale submitted by the Local Union, he shall immediately notify the General Executive Board of his action, together with a statement of the conditions surrounding the Local Union, and if, in his opinion, the Local Union is warranted in presenting the wage scale to the employers, he shall request the General Executive Board to endorse the action of the Local Union; providing the Local Union uses all necessary endeavors to bring about a peaceable and satisfactory settlement by negotiation or arbitration.

Sec. 64. Any Local Union that has not paid per capita tax on every member who has paid dues into said Local, and that has not its membership enrolled at Headquarters, shall not be entitled to benefits in case of a difficulty.

Sec. 65. Strike benefits or relief in cases of lockouts, etc., shall be paid to all members in

good standing at the rate of \$10.00 per week, and will be payable at the end of the second week of the strike or lockout; but in no case shall a fraction of a week's strike pay be allowed, nor the first week of a strike or lockout be paid for; any arrearages for dues, and dues one month in advance to be deducted from the first payment of benefits and duly credited to the member or members so in arrears. All members shall be entitled to strike pay for such a period of time as the condition of the defense fund of the International Organization shall allow.

No member of any Local Union over thirty days in arrears for payment of dues will be eligible to benefits in case of strike or lockout.

Sec. 66. The General Executive Board shall have the power to pay out the entire International Treasury to a Local Union that is on strike, when the strike has been authorized by the International Executive Board.

The General President, with the sanction of the General Executive Board, shall have the power, when satisfied upon facts and information in their possession that the support of a strike or lockout should cease, to declare the same at an end so far as the financial aid of the International Union is concerned.

Sec. 67. The General Executive Board shall not approve of any strike accompanied by payment of benefits unless there are sufficient funds on hand in the International Treasury to pay strike benefits.

Sec. 68. The General Secretary-Treasurer shall, on or about the end of the second week and each succeeding week of a strike or lock-out, forward to the Local Secretary-Treasurer or deputy a check covering a sufficient amount to pay each week's benefits, and he shall also furnish blank pay roll sheets on which each member shall sign for the amount received, said payroll to be made in duplicate.

Sec. 69. The Local Secretary - Treasurer or Deputy shall forward the original payroll to Headquarters, but shall retain a carbon copy of the same for future reference, and the Executive Board of the Local Union that is out on strike shall endorse the payroll.

Failure to receive receipted payroll sheets in due time at the General Office will be sufficient cause for the discontinuance of benefits to any Local Union failing to comply with this law.

Sec. 70. During the continuance of a strike the Deputy and Strike Committee of the Local Union shall make weekly reports to the General Secretary-Treasurer, showing the amount of moneys distributed for benefits, the number of beneficiaries and all other facts that may be required.

Sec. 71. All moneys from the International defense fund remaining unused by the Local Union at the close of the strike or lockout shall be returned at once to the General Secretary-Treasurer.

Sec. 72. No Local Union shall receive financial assistance from the International Brother-

hood unless the Local Union has been six months in good standing.

Sec. 73. A Local Union or member more than one month in arrears for per capita tax or dues shall not be entitled to benefits, and should a Local Union or member become three months in arrears for per capita tax, dues, fines, etc., they shall stand suspended and shall not be entitled to benefits for three months after all arrears have been paid.

Sec. 74. No member of a Local Union on strike shall be entitled to a weekly benefit unless he reports daily to the proper officers of the Local or International Union while the strike continues, and no member who shall receive a week's work (three days to be considered a week) shall receive benefits. Any member refusing to work for an employer considered fair, while on strike, shall be debarred from all benefits under this law.

Sec. 75. A declaration on the part of an employer, or a combination of employers, to the effect that their employees must cease their connection with the Brotherhood or cease work, or any combination entered into by a number of employers, for the purpose of throwing their employees out of employment, shall be deemed a lockout. In case a lockout is reported to the International Brotherhood, the General President shall endeavor to obtain a satisfactory proof that the difficulty is a bona fide lockout, as defined in this section. This section does not apply to a reduction in wages.

Sec. 76. No Local Union shall receive financial assistance from the International Brotherhood unless the Secretary-Treasurer of said Local Union has been bonded in accordance with the provisions of our constitution. It shall be compulsory upon the officers of a Local Union to immediately notify the International Headquarters of any difficulty.

Sec. 77. All Local Unions affiliated with the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers, soliciting financial aid from sister Local Unions, must first receive official approval and endorsement from the International Executive Board.

Sec. 78. Charter members shall consist of the names forwarded to Headquarters with the application for charter, and Local Unions must procure initiation stamps for all charter members, but charter members shall not be required to pay per capita tax for the month in which they receive their charter.

Sec. 79. Charter members shall receive a free copy of the constitution and official due card.

Sec. 80. A Local Union may, by majority vote, keep its charter open for a term of thirty or sixty days after receiving the same, but all members initiated must have their official due cards stamped as provided by Section 50.

Dues of members of all Local Unions now and hereafter chartered by the International Union shall not be less than two dollars (\$2.00) per month.

Any Local failing to comply with this section shall not be entitled to any financial or other benefits from the International Union, and the General Executive Board may revoke the charter of any Local Union failing to comply with this law, if the Board deems it advisable.

Any Local Union requesting strike endorsement or who may be locked out shall not receive any benefits, financial or otherwise, if they have been chartered for one year or more and have failed to carry out this section of the Constitution for a period of one year prior to time of lockout or request for strike endorsement.

All Local Unions must hold meetings at least once a month, except where the General Executive Board is satisfied, from evidence provided by the Local Unions, that it is impossible or unsatisfactory or unreasonably expensive, and in such cases the General Executive Board shall be given full authority to establish such conditions relative to the holding of meetings as in their judgment they deem advisable for the best interests of that particular district.

JOINT COUNCIL

Sec. 81. Whenever three or more Local Unions are located in one city they shall form a Joint Council, but where there are only a few Local Unions in small cities or towns adjoining or adjacent to large cities, they shall affiliate with the Joint Council in the large cities.

In localities composed of small cities and towns, the General Executive Board shall decide when, where and by whom Joint Councils

shall be formed. Should any dispute arise as to the jurisdiction of a Joint Council, it shall be decided by the General Executive Board.

(Each Local shall be entitled to seven delegates, including its Business Agent.)

(The seven executive officers of each Local Union shall constitute the delegates to the Joint Council. The Business Agent shall be entitled to the floor, but cannot introduce a motion (or vote.) Local Unions shall pay monthly dues, proportionate to their numerical strength, sufficient to maintain the organization.

Joint Councils shall have full power to adjust all questions of jurisdiction between Local Unions, subject to the approval of the General Executive Board, to try cases against Local Unions, cases appealed from Local Unions, and to try individual cases which Local Unions refuse or neglect to try.

It shall make by-laws which shall take effect upon approval by the General President, and all Local Unions within its jurisdiction must affiliate, comply with its laws and obey its orders.

Sec. 82. Prior to a Local Union becoming involved in a strike, lockout, boycott, lawsuit or any serious difficulty, they shall immediately notify the Secretary of the Joint Council, whose duty it shall be to at once call a meeting of the Council, and they shall take action as they deem advisable and report the same to the General President. Should any member violate his obligation by refusing to employ union men, or to patronize and assist members of the

International Brotherhood, the member who may have been aggrieved shall present his case in writing to the Joint Executive Council and they shall hear and decide the case and report their decision back to each affiliated Local. A Joint Council may make such by-laws as they deem proper provided they do not conflict with the laws of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers.

Sec. 83. Whenever there is not a sufficient number of any one craft, a mixed Local may be formed. There shall be only one Local Union of any craft chartered in any city, except in localities where it may be necessary, and in such cases the Executive Board shall, after the Joint Council has granted permission, have full power to determine the advisability of issuing a separate charter.

Whenever there are two hundred (200) or more members of two different crafts in one Local Union, one craft may, if they deem it advisable, apply for a charter and form a separate Local Union, and the Local Union from which they withdraw shall furnish them with funds to procure their charter. The issuance of the charter by the International Organization shall constitute the formation of the new Local Union, and the members, desiring to withdraw shall procure a transfer card into the new Local Union.

Sec. 84. No Local Union can draft a constitution, or make a law or rule which will prevent a member of any other Local Union in good standing from securing employment, nor

shall the members of any local, either individually or collectively, prevent a member in good standing or any other Local from securing employment in their jurisdiction.

TRANSFER CARD

—Date of Initiation—

Sec. 85. This is to certify that the bearer hereof, Brother _____ whose name is written on the margin of this card in his own handwriting, is a member in good standing of Local No. _____, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers, and is entitled to all rights and privileges under our jurisdiction.

We recommend him to the friendship and protection of all members of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers, wherever he may be, and to free admission, provided he has been a member not less than ninety days in the Local Union from which he transfers, otherwise he shall pay the difference in the initiation fee to the Local Union to which he transfers for the space of one month from the date hereof, and no longer.

This card expires _____, 19____, and is null and void after that date, unless renewed or deposited in accordance with the constitution.

The member receiving this card will be suspended from all rights and benefits unless the card is renewed by the Local Union before its expiration. It will also be forfeited unless deposited within thirty days after going to work

in any town or city where there is a Local Union.

Given under our hands and the seal of Local Union No., this day of 19.....

(Seal)

HONORABLE WITHDRAWAL CARD

Sec. 86. This is to certify that the bearer hereof, Brother, whose name appears on the margin of this card in his own handwriting, has paid all dues and demands and withdrawn in good standing from membership in Local No.

This card entitles him to readmission to the Local Union from which this card was issued at any time, unless otherwise ordered by the Local Union.

Section 4, Constitution: "No person shall be entitled to membership in this organization who owns or operates more than one team or vehicle. The General Executive Board, when they deem it advisable or for the best interest of our International Union and upon the recommendation of the Local Union, may allow a man to own more than one team or vehicle and hold membership, provided that he hires or employs none but members of our International Union and that he drives a vehicle himself, and pays the driver the prevailing rate of wages in the locality.

"Any man owning and operating but one team or automobile is entitled to membership in our organization. This will also permit the

owner of one team or automobile to hire a helper in case he is sick or disabled or working for his Local Union, or for the International Union. He may get a substitute to work for him, but the substitute must be a member of the International Organization.

"Any member of the International Organization going to work at another craft, must be given an honorable withdrawal card, and cannot remain a member of the International Organization."

Any ex-member out on withdrawal card and working under the jurisdiction of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers must re-deposit his withdrawal card with the local from which it was issued and transfer into the local union under whose jurisdiction he is working. If one exists in the city in which he is employed. Failure to comply with this rule, cancels his withdrawal card.

Local Unions are not compelled to accept withdrawal cards if member has committed any offense while out on withdrawal card which would be injurious to union principles. Also if Local Union is paying benefits and member has fallen into bad health or is liable to become a charge against Local or International Union, acceptance of withdrawal card can be refused by Local Union.

Given under our hands and the seal of Local Union No., this day of, 19.....

(Seal)

....., Secretary.
....., President.

Local Unions shall have jurisdiction over the granting of all honorable withdrawal cards.

Sec. 87: It shall be compulsory for a member working under the jurisdiction of another Local Union to procure a transfer card at the first regular meeting, from the Local of which he is a member, and to deposit the same with the Local Union under whose jurisdiction he is working, within thirty days. If a member is working under the jurisdiction of another Local Union, or the Joint Council decides he should transfer, and he refuses, he thereby forfeits his membership, and his Local must not accept any more dues or furnish him with a button.

Said member must sign his name in the presence of the Secretary of the Local from which he transfers and countersign in the presence of the Secretary of the Local to which he seeks admission, and also produce an official due card stamped up to date. Salaried officers of the International Brotherhood shall not be required to transfer from their respective Locals while employed by the International Organization.

CHARGES AND TRIALS

Sec. 88. The General Executive Board shall have exclusive jurisdiction in trying individual members, Local Unions, Joint Councils, or International officers for all offenses committed against the International Organization, or the officers of the International Organization.

A copy of the charges, time and place of the commission of the offense and the date set for trial, shall be furnished the accused. If con-

victed, defendant may appeal to the next convention. If found not guilty the defendant shall have his expenses paid by the International office. If defendant is unable to be present at the meeting of the Board, he, or they, may present their case in writing, but pending an appeal, the decision of the General Executive Board must be complied with.

CHARGES AGAINST LOCALS AND MEMBERS

Sec. 89. Any member or members against whom a Local Union has charges and the member coming to said Local Union upon a transfer card, the Local Union shall have the right to try him upon the charges and enforce their finding against the brother, in accordance with the International laws. Upon a decision being handed down by a Joint Council, that jurisdiction be given any Local Union over members working at any particular branch of our craft it shall be mandatory upon the Secretary-Treasurer of the Local Union to immediately furnish the brother with a transfer card, after having received notice from the Secretary of the Joint Council that jurisdiction has been granted some other Local Union affiliated with the International Brotherhood.

Sec. 90. Any member who knowingly goes to work or remains in the employment of any person, firm or corporation whose men are on strike or locked out, unless he has permission of the International, the Joint Council or his Local Union, may be tried by the Executive

Board of his Local Union, on written charges by giving him written notice of the charges and the time and place of trial, allowing a reasonable time for the defendant to reach the place set for trial. If he does not answer trial, the Executive Board may proceed in his absence, and if he is found guilty he shall be punished by suspension, which shall take effect on the date of the commencement of the offense, at which time he forfeits all rights, privileges and benefits in the organization.

He may appeal to the Joint Council, but pending the appeal the verdict is binding.

Sec. 91. (1) Any member who wrongfully takes or retains any money, books, papers or any other property belonging to the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers, any Joint Council or Local Union; or (2) who mutilates, erases, destroys or in any way injures any books, bills, receipts, vouchers, or other property of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers, any Joint Council or Local Union; or (3) by word, deed or example wilfully injures or retards the growth or prosperity of the International Brotherhood, any Joint Council or Local Union; or (4) who does not use his best efforts to promote all duly accredited union labels and advance the cause of trades unionism, or who does not conduct himself, as far as lies within his power, with credit to the movement; or (5) knowingly gives or attempts to give directly or indirectly, any information to any employer on the unfair list or whose men are on strike or locked out, or

are trying to secure an agreement or any improvement in their working conditions, or who are trying to prevent an increase in hours of labor or a decrease in wages, for the purpose of assisting such employer, or for any gain or promise of gain; or (6) knowingly goes to work or remains in the employment of any person, firm or corporation on an unfair list without permission from the International Brotherhood, the Joint Council or his Local Union, may, upon conviction, be punished by reprimand, fine, suspension or expulsion.

Sec. 92. Any member or Local in good standing, or the General Executive Board, may prefer charges in writing, setting forth the facts constituting such charges.

Charges against a member shall be preferred in duplicate to the Executive Board of his Local Union. It shall notify the accused by registered letter containing a copy of the charges and the time and place set for the trial, and give the defendant at least two weeks to prepare for trial, but charges for violation of Sections 88 and 90 shall be tried as there prescribed.

If a Local Union refuses or neglects to try a member the charges may be preferred to the Joint Council, the defendant shall be notified by registered letter and given a reasonable time to prepare for trial. A complainant or defendant who is aggrieved by a finding or penalty imposed by the Executive Board of a Local Union may appeal to the Joint Council.

When an appeal is taken all the papers in the case must be immediately transferred to the

Joint Council and the case there tried as an original case. Members of Local Unions cannot appeal from the decision of the Joint Council.

Where no Joint Council exists either party may appeal to the General Executive Board, whose decision in such cases shall be final.

Sec. 93. Charges against Local Unions shall be preferred in duplicate to the Joint Council and shall be read in open meeting and one copy sent to the Recording Secretary of the Local Union by registered letter, containing a notice of the time and place of the trial. The accused must have at least two weeks to prepare for trial.

If a defendant does not appear for trial, the trial shall proceed, on proof that sufficient notice of the time and place set for the trial was received by the defendant.

The defendant shall be notified of the verdict.

The defendant may appeal to the General Executive Board, who may hear such appeal or refer it to the next International Convention.

FINES

Sec. 94. Fines imposed on a member shall go to his Local Union. Fines imposed on a Local Union shall go to the Joint Council, and fines imposed where the General Executive Board has original jurisdiction shall go to the International.

Any member or Local found guilty of any offense may be punished by reprimand, fine, suspension or expulsion.

Failure to comply with the penalty imposed expels the Local or member without any further action.

Any member or Local that is tried by the General Executive Board cannot be tried for the same offense by a Local or Joint Council.

DISSOLUTION

Sec. 95. No local Union can dissolve while there are seven (7) dissenting members; no Joint Council can dissolve while there are two (2) dissenting Local Unions; nor can this International dissolve while there are seven dissenting Locals.

INSTRUCTIONS TO LOCAL UNIONS FOR DRAFTING BY-LAWS

Sec. 96. Each Local Union shall have the right to make such by-laws as it may deem advisable, providing they do not conflict with the laws of the International Union.

The officers of the Local Union shall consist of a President, Vice-President, Recording Secretary, Secretary-Treasurer and three Trustees. These officers shall constitute the Executive Board of the organization.

The Conductor and Warden shall be appointed by the Chair. All officers shall serve for the period of their election unless removed for incompetency, neglect of duty or dishonesty. This can only be done by a motion being regularly made and seconded by two members in good standing, after a majority vote has de-

cided, by secret ballot, against the officer or officers, and only at a notified or summons meeting.

Nomination of officers shall take place at the first meeting in December and election at the next meeting. The officers-elect may be installed at the same meeting at which they are elected.

The Business Representative of a Local Union shall be elected the same as any other officer; but can be removed at any time for incompetency, dishonesty or neglect of duty, or if there are no funds in the Local Union to pay his salary. He shall be given a trial, as stated above, the same as any other officer.

The Trustees shall be elected in the following manner: One for three years, one for two years and one for one year.

LABOR DAY

Sec. 97. We recognize the first Monday in September as Labor Day, except in states where another day is provided by law, and call upon all Local Unions to observe the same. It is advisable for Local Unions to unite and march under one banner in cities where there is more than one Local Union and each Local Union can make such rules and regulations requiring their members to observe the day, as best adapted to their locality.

RULES OF ORDER

Sec. 98. The President, while presiding, shall state every question coming before the Local

Union before suffering debate thereon, and immediately before putting it to a vote he shall ask: "Is the Union ready for the question?" Should no member rise to speak and the Local Union indicate its readiness, he shall rise to put the question. After he has risen no member shall be permitted to speak upon it.

Sec. 99. When the decision of the President is appealed from, he shall state his decision and the reasons therefor, from the chair. The party appealing shall then briefly state the reasons for the appeal, after which, without further debate, the question shall be put thus: "Shall the decision of the chair stand as the judgment of this Union?"

Sec. 100. Every member, while speaking, shall adhere to the question under debate, avoid all personality and indecorous language, as well as any reflection on the Union or any member thereof.

Sec. 101. Any member, while speaking, being called to order by another, at the request of the chair, shall cease speaking and be seated until the question of order is determined.

Sec. 102. No member shall speak more than once on the same question until all the members wishing to speak have had an opportunity to do so; nor more than twice without the permission of the chair, nor more than ten minutes at one time.

Sec. 103. All resolutions and motions; other than the first six, in Rule 8, to accept or adopt the report of the committee, shall be reduced to

writing before the President shall state the same to the Union.

Sec. 104. Any member may call for the division of a question when the sense will admit of it.

Sec. 105. The following motions shall have precedence in the following order herein arranged: First, to adjourn; second, to close debate; third, to take the previous question; fourth, to lie on the table; fifth, to postpone indefinitely; sixth, to postpone to a definite time; seventh, to refer; eighth, to amend. The first four shall be decided without debate.

Sec. 106. The motion to close debate may be made by two members, and shall be put in this form: "Shall the debate now close?" And, if adopted, the President shall proceed to take the question on the resolutions and amendments thereto, according to priority, without further debate.

Sec. 107. The call for the previous question may be made by six members and shall be put in this form: "Shall the main question be now put?" If adopted, the effect shall be to take the question on the original resolution to the exclusion of all debate and all amendments which have not been adopted.

Sec. 108. All votes other than amendments to the Constitution, By-Laws or Rules of Order may be considered at the same or next succeeding meeting upon a motion made and seconded by two members who voted in the majority; provided the Union agrees thereto; but after a

motion to reconsider has once been lost, it shall not be renewed.

Sec. 109. Every member present shall vote on all questions before the Union unless personally interested. A motion to excuse a member from voting shall be put without debate.

Sec. 110. No member shall enter or leave the Union meeting during the reading of the minutes, admission of new members, installation of officers, or the taking of a question by yeas and nays; and no member shall be allowed to leave the Union meeting without the permission of the presiding officer, under penalty of twenty-five cents fine.

Sec. 111. When a motion has been declared carried or lost by acclamation, any member, before the Union proceeds to other business, may call for a count, but the yeas and nays cannot be called unless demanded before the President rises to put the question.

Sec. 112. The yeas and nays may be called for by two members and upon the assent of one-third of the members present shall be taken.

Sec. 113. A motion to adjourn having been put and lost shall not be in order again, provided there is further business before the Union, until fifteen minutes have elapsed.

Sec. 114. No subject of a political or religious nature shall be at any time admitted, under a penalty of fifty cents fine.

Sec. 115. All business done in the Union shall be strictly secret to all outside the Union.

Sec. 116. All and other proceedings in debate, not herein provided for, to be governed by Roberts' Rules of Order.

One tap of the gavel shall call to order; two taps to be seated; three taps to rise.

INSTRUCTIONS TO LOCAL SECRETARY-TREASURERS

Sec. 117. Local Union Secretary-Treasurers, immediately upon taking the office of Secretary-Treasurer, shall procure a suitable surety bond, and a copy of the same must be filed in the General Office at Indianapolis.

Local Secretary-Treasurers shall deposit all moneys of the Local Unions in a reliable bank in the name of the Local Union at least twice a month or oftener, if possible, as the Local Union may designate from time to time.

Local Secretary-Treasurers must pay all bills by check, countersigned by the proper officials of the Local Union.

Local Secretary-Treasurers must balance their day book and cash book monthly, showing the exact balance on hand with the Local Union on the first day of the coming month, and have their bank book balanced on the last day of the month or get a bank statement from the bank on the last day of the month, showing the exact amount of money in the bank, so that the Trustees of the organization may verify the bank statement and the books of the Local Union at any time.

Local Secretary-Treasurers must keep the International bookkeeping system, consisting of a day book, ledger and cash book.

Local Secretary-Treasurers must receive a voucher properly signed by the President and Recording Secretary for all bills that are ordered paid by the Local Union.

Local Secretary-Treasurers must keep the applications of all new members initiated filed monthly.

Local Secretary-Treasurers must keep all of the part paid applications on hand properly filed.

Local Secretary-Treasurers must keep all receipted bills with a voucher of the Local Union attached to same and filed monthly.

Local Secretary-Treasurers must attach all return checks to the stub in the check book of the Local Union each month, when he receives his cancelled checks from the bank.

Local Secretary-Treasurers shall report to the General Secretary-Treasurer on the first day of each month, the number of men that are being carried on the books of the Local Union as good standing members, and all new members who have been initiated during the previous month and all members who have paid up their back dues and again become in good standing. This report must be made on the monthly report blank that is issued by the General Secretary-Treasurer.

Local Secretary-Treasurers must pay to the General Secretary-Treasurer thirty cents out of every due collected by the Local Union.

Local Secretary-Treasurers must report the names and addresses of all new members coming into the Local Union to the General Office.

Local Secretary-Treasurers shall send to the General Secretary-Treasurer a revised list quarterly of the names and addresses of all members in good standing in the Local Union.

Local Secretary-Treasurers cannot and must not carry any men on their books as members of the organization and mark them exempt from paying dues.

Local Secretary-Treasurers on the monthly audit of the Trustees must see that the Trustees sign his books, if the Trustees of the Local Union have found them correct and the bank balance verified with the balance on the books of the Local Union.

Local Secretary-Treasurers must see that the Chairman of the Trustees forwards a copy of the monthly audit, properly signed by the Trustees, showing the balance on hand with the Local Union to the General Secretary-Treasurer.

A. Local Secretary-Treasurer whose term of office expires and his successor is elected to take his place, must see that his successor is properly bonded and a copy of the bond sent to the General Office before he transfers the funds of the organization to his successor in office.

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Court for a writ of certiorari to that Court. The respondents in opposition thereto relied principally upon the fact that the decision of the Court of Appeals was not reviewable because a Federal question was not presented for decision. On May 5th, 1941, the application for the Writ of Certiorari was denied by this Court for that reason. In its memorandum opinion this Court said:

"It does not appear from the record that the federal question presented by the petition was necessarily decided by the Court of Appeals. The petition for certiorari is denied. *Lynch v. New York ex rel. Pierson*, 293 U. S. 52; *Honeyman v. Hanan*, 300 U. S. 14, 18."

Thereafter, the petitioners obtained a certificate from the Court of Appeals of the State of New York that a Federal question was passed upon and petitioned this Court for a rehearing of the application for a writ of certiorari. This application was served upon the respondents on the evening of May 28th, 1941. The petitioners were unfamiliar with the procedure and practice of this Court and were under the impression that there was a twenty-day period within which to file papers and a brief in opposition to the application for a rehearing. To the surprise of the petitioners, before any papers or brief in opposition had been filed, this Court, on June 2nd, 1941, handed down a per curiam opinion reversing the judgment of the Court of Appeals of the State of New York. The opinion read as follows:

"Bakery and Pastry Drivers and Helpers Local 802 of the International Brotherhood of Teamsters, et al., petitioners, v. Wohl and ano.—On petition for writ of certiorari to the Court of Appeals of the State of New York. The petition for rehearing is granted. The order denying certiorari is vacated and the petition for writ of certiorari is granted. The judgment is reversed (*Am. Federation of Labor v. Swing*, No. 56, decided February 10, 1941)."

IN THE
Supreme Court of the United States

OCTOBER TERM, 1940.

BAKERY AND PASTRY DRIVERS AND HELPERS LOCAL 802 OF THE
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, PETER
SULLIVAN, individually and as President of the said
Union, PADDY SULLIVAN, individually and as an officer
of said Union, and HYMAN BERNSTEIN, individually and
as business agent of said Union, all of 265 West 14th
Street, New York City,

Petitioners,

against

HYMAN WOHL and LOUIS PLATZMAN,

Respondents.

**PETITION FOR REHEARING OF ORDER GRANTING
THE WRIT OF CERTIORARI TO THE COURT OF
APPEALS OF THE STATE OF NEW YORK AND
REVERSING THE JUDGMENT OF THE COURT
OF APPEALS OF THE STATE OF NEW YORK.**

Statement of Facts.

After the Court of Appeals of the State of New York
had unanimously affirmed the granting of an injunction to
the respondents herein, the petitioner Union applied to this

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Statement as to Evidence.

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The foregoing case contains all of the evidence adduced and proceedings had upon the trial herein, together with the exceptions of both sides taken on said trial.

Opinion by Mr. Justice Noonan.

(New York Law Journal, July 11, 1939.)

Wohl v. Bakery and Pastry Drivers and Helpers Local 802 of the Internat. Brotherhood of Teamsters et al.—Each of the two plaintiffs are peddlers engaged in the business of buying baked food products from different manufacturing bakers and reselling them to grocery stores. Each is the owner of a truck used by him in the distribution of his wares. One of the plaintiffs, Wohl, has been a peddler for five years, and the other, Platzman, for two years. Wohl buys his merchandise from four different bakeries and Platzman from two. Neither one has any contractual relation with any of these bakeries. The earnings of the plaintiffs are based upon the difference between the purchase and the resale price of the products. The approximate income of Wohl is about \$32 weekly, from which he supports his mother and two motherless daughters. He works about thirty-three hours a week and has no employee.

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Platzman also has no assistant, is married and an expectant father and his income is about \$35 weekly, derived from a working schedule of sixty-five hours. These plaintiffs seek a permanent injunction restraining the defendant union from picketing the places of business of the manufac-

turing bakers who sell to them and of the customers who buy from them. The proof is that the defendant threatens to picket these manufacturers and the various customers of the plaintiffs unless each of the plaintiffs employ a member of the defendant union one day a week to assist them. The place of business of the Diamond Baking Company, one of the manufacturers selling to the plaintiffs, has already been picketed. Another manufacturer was also picketed for a short period.

The plaintiffs contend that they are engaged in an independent calling and that their meagre earnings are insufficient to permit them in justice to their families to employ a union member for one day a week. Mr. Justice McLaughlin denied a motion for a temporary injunction on the ground that a labor dispute was not involved. I think that decision established the law of the case. Furthermore, upon the authority of *Luft v. Flove* (270 N. Y. 641), *Thompson v. Boekhout* (273 N. Y. 390), *Goldfinger v. Feinrach* (276 N. Y. 281, 288), *Pitter v. Kaminsky* (7 N. Y. [2d] 10), *Gips v. Osman* (170 Misc. 53), I am constrained to grant the injunction prayed for against all picketing by the defendant union.

Settle findings and decree.

Stipulation Settling Case.

541

IT IS HEREBY STIPULATED that the foregoing record contains all the evidence given upon the trial of this action, together with the exceptions of both sides taken on said trial, and that the same be settled and ordered on file as the case on appeal and annexed to the judgment roll herein.

Dated, New York, February 15, 1940.

JOSEPH AOFEL,

Attorney for Plaintiffs-Respondents.

RICE & MAGUIRE,

Attorneys for Defendants-Appellants. 542

Order Settling Case.

On the above stipulation, I HEREBY CERTIFY and IT IS HEREBY ORDERED that the foregoing case contains all the evidence introduced upon the trial of this action, together with the exceptions of both sides taken on said trial, and that the same is hereby settled as the case herein and is hereby ordered to be filed in the office of the Clerk of this Court.

Dated, New York, February 17, 1940.

543

THOMAS A. NOONAN,

J. S. C.

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Stipulation Waiving Certification.

Pursuant to Section 170 of the Civil Practice Act,

IT IS HEREBY STIPULATED that the foregoing consists of true and correct copies of the notice of appeal, judgment roll, proposed findings, decision, and case and exceptions as settled and of the whole thereof, now on file in the office of the Clerk of the County of New York, and that certification thereof by the Clerk of said County, pursuant to Section 616, is hereby waived.

Dated, New York, February 15, 1940.

545

JOSEPH APFEL,

Attorney for Plaintiffs-Respondents.

RICE & MAGUIRE,

Attorneys for Defendants-Appellants.

Order Filing Record in Appellate Division.

Pursuant to Section 616 of the Civil Practice Act, it is

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ORDERED that the foregoing printed record be filed in the office of the Clerk of the Appellate Division of the Supreme Court in the First Department.

Dated, New York, February 17, 1940.

THOMAS F. NOOXAN,

J. S. C.

Notice of Appeal to Court of Appeals.

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SUPRÊME COURT

OF THE STATE OF NEW YORK,

COUNTY OF BRONX.

HYMAN WOHL and LOUIS PLATZMAN,
Plaintiffs-Respondents,

against

**BAKERY AND PASTRY DRIVERS AND HELPERS
 LOCAL 802 OF THE INTERNATIONAL BROTHER-
 HOOD OF TEAMSTERS, PETER SULLIVAN,
 individually and as President of the said
 Union, PADDY SULLIVAN, individually and
 as an officer of the said Union, and HYMAN
 BERNSTEIN, individually and as business
 agent of said Union, all of 265 West 14th
 Street, New York City,
 Defendants-Appellants.**

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Sirs:

PLEASE TO TAKE NOTICE, that the defendants, Bakery and Pastry Drivers and Helpers Local 802 of the International Brotherhood of Teamsters, Peter Sullivan, individually and as President of said Union, Paddy Sullivan, individually and as officer of said Union, and Hyman Bernstein, individually and as Business Agent of said Union, all of 265 West 14th Street, New York City, hereby appeal to the Court of Appeals of the State of New York, from an order of the Appellate Division of the Supreme Court, First Department, entered in the office of the Clerk of said Court on the 17th day of May, 1940, affirming a judgment of the

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Notice of Appeal to Court of Appeals.

Supreme Court, Bronx County, entered in the office of the Clerk of the County of Bronx on the 1st day of November, 1939, in favor of the plaintiff and against the defendant herein, and said defendant further appeals from a judgment of the Supreme Court, Bronx County, entered upon the said order of affirmance in the office of the Clerk of Bronx County on the 21st day of May, 1940, which judgment affirms the aforesaid judgment of said Supreme Court, Bronx County, entered in the office of the Clerk of Bronx County on the 1st day of November, 1939, and from each and every part of said order and judgment of affirmance.

551

Dated: New York, N. Y., May 22nd, 1940.

RICE & MAGUIRE,
Attorneys for Defendants,
Office & Post Office Address,
122 East 42nd Street,
Borough of Manhattan,
City of New York.

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**Order of Affirmance on Appeal from
Judgment.**

553

At a Term of the Appellate Division of
the Supreme Court held in and for
the First Judicial Department in the
County of New York, on the 17th day
of May, 1940.

Present—

HON. FRANCIS MARTIN,
Presiding Justice,

“ JAMES O'MALLEY,
“ EDWARD S. DORE,
“ ALBERT COHN,
“ JOSEPH M. CALLAHAN,

Justices.

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HYMAN WOHL and LOUIS PLATZMAN,
Respondents,
against

BAKERY AND PASTRY DRIVERS AND HELPERS
LOCAL 802 OF THE INTERNATIONAL BROTHER-
HOOD OF TEAMSTERS, PETER SULLIVAN,
individually and as President of the said
Union, PADDY SULLIVAN, individually and
as an officer of the said Union, and HYMAN
BERNSTEIN, individually and as business
agent of said Union, all of 265 West 14th
Street, New York City,

8603

Appellants.

An appeal having been taken to this Court by
the defendants from a judgment of the Supreme
Court, Bronx County, entered on the 1st day of
November, 1939, and said appeal having been
argued by Mr. Edward C. Maguire of counsel for
the appellants, and by Mr. Joseph Apfel of counsel

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Order of Affirmance.

for the respondents; and due deliberation having been had thereon,

It is ordered and adjudged that the judgment so appealed from be and the same is hereby, in all things, affirmed; and that the respondents recover of the appellants the costs of this appeal. Two of the Justices dissent and vote to reverse and dismiss the complaint.

Enter,


F. M.

Filed May 17, 1940.

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Judgment of Affirmance Appealed From.

**SUPREME COURT
OF THE STATE OF NEW YORK,
COUNTY OF BRONX.**

HYMAN WOHL and LOUIS PLATZMAN,
Plaintiffs,
against

**BAKERY AND PASTRY DRIVERS AND HELPERS
LOCAL 802 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, PETER SULLIVAN,**
individually and as President of the said Union, **PADDOY SULLIVAN,** individually and as an officer of the said Union, and **HYMAN BERNSTEIN,** individually and as business agent of said Union, all of 265 West 14th Street, New York City.

Defendants.

The defendants-appellants above named having appealed to the Appellate Division of the Supreme

Judgment of Affirmance.

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Court, First Department, from a judgment entered in this action on the 1st day of November, 1939, in the office of the Clerk of Bronx County, and the appeal having been heard at a Term of the Appellate Division of the Supreme Court, First Department, held at the Courthouse in the Borough of Manhattan, City of New York, on the 9th day of April, 1940, and an order of said Appellate Division having been made and entered affirming the said judgment with costs, all of the Justices concurring, except Mr. Justice Callahan and Mr. Justice Dore dissenting.

Now on motion of Joseph Apfel, attorney for plaintiffs-respondents, it is hereby

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ADJUDGED that said judgment appealed from be, and the same hereby, is affirmed in all things, and that plaintiffs-respondents recover of the defendants-appellants above named, the sum of \$113.35 costs of said appeal, and that the plaintiffs-respondents have execution against the defendants-appellants therefor.

Dated: New York, May 21, 1940.

MICHAEL B. McHUGH,

(Seal)

Clerk.

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Opinion of Appellate Division.**SUPREME COURT,**

APPELLATE DIVISION, FIRST DEPARTMENT,

April, 1940.

FRANCIS MARTIN, P. J.,
 JAMES O'MALLEY,
 EDWARD S. DORE,
 ALBERT COHN,
 JOSEPH M. CALLAHAN, J.J.

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HYMAN WOHL, and LOUIS PLATZMAN;
 Respondents,

vs.

BAKERY AND PASTRY DRIVERS AND HELPERS
 LOCAL 802 OF THE INTERNATIONAL BROTHER-
 HOOD OF TEAMSTERS, PETER SULLIVAN,
 individually and as President of the said
 Union, PADDY SULLIVAN, individually and
 as an officer of the said Union, and HYMAN
 BERNSTEIN, individually and as business
 agent of said Union, all of 265 West 14th
 Street, New York City.

S603

Appellants.

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Appeal from judgment of the Supreme Court,
 Bronx County, entered upon decision after
 trial at Special Term.

EDWARD C. MAGUIRE of counsel (SAMUEL J. COHEN
 with him on the brief; RICE & MAGUIRE, attor-
 neys) for appellants.

JOSEPH APPEL for respondents.

Judgment affirmed, with costs. No opinion. (Dore and Callahan, JJ., dissent and vote to reverse and dismiss the complaint; dissenting opinion by Callahan, J.)

CALLAHAN, J. (Dissenting):

Upon the facts found herein, the injunction should not have been granted, and the complaint should have been dismissed. Though plaintiffs had no employees, they were conducting business as part of a wide-spread system of "peddling" that seriously menaced the standards sought to be maintained by defendant union. "Peddling" means an arrangement whereby former drivers for manufacturers are aided in procuring trucks, and go into business distributing the products of the manufacturers. Such peddlers work seven days a week, and longer than union hours. Defendant union consists of drivers in the same industry. It had a vital interest in maintaining employment of its members, shorter hours, and a day of rest in seven. Therefore, a labor dispute was involved, and it was proper and lawful for it to picket in an orderly manner when defendant wished to protest against the actions of the peddlers (*Goldfinger v. Feintuch*, 276 N. Y. 281).

566

In *Thompson v. Boekhout* (273 N. Y. 390), relied on as supporting plaintiffs' right to an injunction, there was no proof showing any such menacing system to union labor and working conditions as was disclosed herein.

567

Further, we find herein a labor dispute within §876-a, subdivision 10, of the Civil Practice Act, for there was a controversy concerning conditions of employment, and other matter arising out of the

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employer-employee relationship referred to in the statute. Surely, such matters as working hours and a day of rest relate to conditions of employment; and, if the sellers of manufactured products were aiding plaintiffs in the development of a system which threatened these things, a controversy concerning the working conditions referred to in the statute was presented. It is not essential, under §876-a, that plaintiffs be the employer of the man whom defendants seek to represent. (*Goldfinger v. Feintuch*, supra.) The complaint should have been dismissed for failure to comply with §876-a. The prior decision of Special Term herein, concerning the non-existence of a labor dispute, does not bind this court as the law of the case. (*Walker v. Gerli*, 257 App. Div. 249.)

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Even if the present controversy were not one defined in §876-a, it does not follow that defendants' conduct was unlawful. A legitimate labor dispute may exist outside of those defined in the section. If a union carries on orderly picketing to protect its interests concerning such disputes, its actions are not unlawful. Much of the law developed in this State on the subject of the rights of organized labor was enunciated before the passage of §876-a, and the statute was not intended to lessen the rights of labor under the principles so enunciated.

570

The judgment should be reversed, and the complaint dismissed.

Dore, J., concurs.

Waiver of Certification in Court of Appeals. 571

Pursuant to Section 170 of the Civil Practice Act,

IT IS HEREBY STIPULATED that the foregoing are correct copies of the notice of appeal to the Court of Appeals, the order of affirmance, the judgment of affirmance appealed from and all papers upon which the Court below acted in making the order of affirmance and judgment of affirmance appealed from, and the whole thereof, now on file in the office of the Clerk of the County of Bronx, and certification thereof pursuant to Section 170 of the Civil Practice Act or otherwise is hereby waived.

Dated, New York, June , 1940. 572

RICE & MAGUIRE,
Attorneys for Defendants-Appellants.

JOSEPH APFEL,
Attorney for Plaintiffs-Respondents.

[fol. 192] SUPREME COURT, BRONX COUNTY

•HYMAN WOHL and LOUIS PLATZMAN, Plaintiffs-Respondents,
against

BAKERY AND PASTRY DRIVERS AND HELPERS LOCAL 802 of the International Brotherhood of Teamsters, Peter Sullivan, Individually and as President of the Said Union, Paddy Sullivan, Individually and as an Officer of the Said Union, and Hyman Bernstein, Individually and as Business Agent of Said Union, Defendants-Appellants

Please Take Notice that upon the remittitur from the Court of Appeals in the above entitled action and upon all the pleadings and proceedings heretofore had herein, the undersigned will move this Court at a Special Term Part I, to be held in and for the County of the Bronx, at the Court House, 851 Grand Concourse, Bronx, New York, on the 9th day of January, 1941, at 10:00 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order making the judgment of affirmance in the Court of Appeals that of this Court and affirming the judgment entered herein on May 21, 1940 with costs, and for such other and further relief as may be proper.

Dated: New York, January 3, 1941.

Yours, etc., Joseph Apfel, Attorney for Plaintiffs,
Office & P. O. Address 220 West 42nd Street, Manhattan, New York.

To: Rice & Maguire, Esqs., Attorneys for Defendants,
122 East 42nd Street, Manhattan, New York.

[fol. 193] COURT OF APPEALS

STATE OF NEW YORK, ss: .

Pleas in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 31st day of December in the year of our Lord one thousand nine hundred and forty, before the Judges of said Court.

Witness, The Hon. Irving Lehman, Chief Judge, Presiding. John Ludden, Clerk.

Remittitur December 31, 1940.

★ HYMAN WOHL & ANO., Respondents,
ag'st.

BAKERY AND PASTRY DRIVERS AND HELPERS LOCAL 802 of the International Brotherhood of Teamsters, Peter Sullivan, Ind. and as President of the Said Union, & Ors. etc., Appellants

Be It Remembered, that on the 14th day of September in the year of our Lord one thousand nine hundred and forty Bakery and Pastry Drivers and Helpers Local 802 of the International Brotherhood of Teamsters & ors. etc., the appellants in this cause, came hereunto the Court of Appeals; by Rice & Maguire, their attorneys, and filed in the said Court a Notice of Appeal and return thereto from the order and judgment of the Appellate Division of the Supreme Court in and for the First Judicial Department.

And Hyman Wohl and another, the respondents in said cause, afterwards appeared in said Court of Appeals by Joseph Apfel, their attorney.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

[fol. 194] Whereupon, The said Court of Appeals, this cause having been submitted by counsel for the respective parties, and after due deliberation had thereon, did order and adjudge that the judgment of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is affirmed, with costs.

And it was also ordered, that the records aforesaid, and the proceedings in this Court, be remitted to the said Supreme Court, there to be proceeded upon according to law.

Therefore, it is considered that the said judgment be affirmed with costs, as aforesaid.

And hereupon as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the form of the statute in such cases made and provided, to be enforced according to law, and which record now remains in the said Supreme Court, before the Justices thereof, &c.

John Ludden, Clerk of the Court of Appeals of the
State of New York.

Court of Appeals, Clerk's Office, Albany, December 31, 1940.

I Hereby Certify, that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

John Ludden, Clerk. (Seal.)

Fee Paid for Certification. .90. N.

No. 54861

STATE OF NEW YORK,
County of Bronx, ss:

I, Michael B. McHugh, Clerk of the said County and Clerk of the Supreme Court of said State for said County, and Clerk of the County Court for said County, Do Certify, That I have compared the preceding with the original Notice of Motion on file in my office, and that the same is a correct transcript therefrom, and of the whole of such original.

Indorsed Filed Jan. 10, 1941.

In Witness Whereof, I have hereunto subscribed my name and affixed my official seal, this 20 day of Mar. 1941.

Michael B. McHugh, Clerk. (Seal.)

[fol. 195] At a Special Term Part I of the Supreme Court of the State of New York, held in and for the County of Bronx, at the Court House, 851 Grand Concourse, Bronx, New York, on the 9th day of January, 1941.

Present: Hon. John B. McGeehan, Justice.

HYMAN WOHL and LOUIS PLATZMAN, Plaintiffs-Respondents,
against

BAKERY AND PASTRY DRIVERS AND HELPERS LOCAL 802 of the International Brotherhood of Teamsters, Peter Sullivan, Individually and as President of the Said Union, Paddy Sullivan, Individually and as an Officer of the Said Union, and Hyman Bernstein, Individually and as Business Agent of the Said Union, Defendants-Appellants

The above named plaintiffs having made a motion for an order making the judgment of affirmance in the Court of

Appeals that of this Court, which judgment so appealed was from a judgement of the Appellate Division of this Court, First Department, entered on the 21st day of May, 1940, in the office of the Clerk of Bronx County, and the Court of Appeals having heard said appeal and ordered and adjudged that the judgment so appealed from be affirmed, and judgment entered for the plaintiffs-respondents with costs, and the remittitur from the Court of Appeals having been filed in the office of the Clerk of Bronx County,

Now, on reading and filing the notice of motion dated the 3 day of January, 1941, a copy of the remittitur from the Court of Appeals, together with due proof of the service of said papers upon the attorneys for the defendants-appellants, and after hearing Joseph Apfel, Esq., attorney for plaintiffs-respondents, in support of said motion and no one appearing in opposition thereto,

[fol. 196] Now, on motion of Joseph Apfel, Esq., attorney for plaintiffs-respondents, and Upon due deliberation having been had thereon and Upon filing the opinion of the court it is Ordered that the said motion be and the same hereby is granted.

It is further Ordered that the said judgment of the Court of Appeals be, and the same hereby is, made the judgment of this Court; and that the judgment entered herein on the 21st day of May, 1940, be, and the same hereby is, affirmed, and that a judgment of this Court be entered herein affirming said judgment with costs of said appeal to be taxed against Bakery and Pastry Drivers and Helpers Local 802 of the International Brotherhood of Teamsters, Peter Sullivan, Paddy Sullivan and Hyman Bernstein.

Enter.

J. B. McG., J. S. C.

Fee Paid for Certification. .50. N.

No. 54862

STATE OF NEW YORK,
County of Bronx, ss:

I, Michael B. McHugh, Clerk of the said County and Clerk of the Supreme Court of said State for said County, and Clerk of the County Court for said County, Do Certify, That I have compared the preceding with the original Order on

file in my office, and that the same is a correct transcript therefrom, and of the whole of such original.

Indorsed Filed Jan. 10, 1941.

In Witness Whereof, I have hereunto subscribed my name and affixed my official seal, this 20 day of Mar. 1941.

Michael B. McHugh, Clerk. (Seal.)

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1940

No. 901

ORDER GRANTING REHEARING AND PETITION FOR WRIT OF CERTIORARI—JUNE 2, 1941

On Petition for Writ of Certiorari to the Court of Appeals of the State of New York

A petition for rehearing having been submitted in this case;

Upon consideration thereof, it is ordered by this Court that the petition for rehearing be, and the same is hereby, granted.

And it is further ordered that the order denying certiorari entered May 5, 1941, be, and the same is hereby, vacated; and that the petition for writ of certiorari herein be, and the same is hereby, granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1940

No. 901

JUDGMENT—June 2, 1941

On Writ of Certiorari to the Court of Appeals of the State
of New York

This cause came on to be heard on the transcript of the record from the Supreme Court of the State of New York, County of Bronx, and was duly submitted.

On consideration whereof, It is ordered and adjudged by this Court that the judgment of the said Supreme Court, on the remittitur of the Court of Appeals, be, and the same is hereby, reversed with costs; and that this cause be, and the same is hereby, remanded to the said Supreme Court for further proceedings not inconsistent with the opinion of this Court.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1940

No. 901

ORDER GRANTING PETITION FOR REHEARING—October 20, 1941

A petition for rehearing having been submitted in this case by respondents,

Upon Consideration thereof, it is ordered by this Court that the said petition be, and the same is hereby, granted. The judgment entered June 2, 1941, is vacated and the mandate is recalled. The case is assigned for argument immediately following No. 142.

(7901)

FILE COPY

No 901

Office - Supreme Court, U.S.
FILED.

JUN 27 1941

CHARLES ELMORE GROPLEY
CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1940.

BAKERY AND PASTRY DRIVERS AND HELPERS
LOCAL 802 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, PETER SULLIVAN,
individually and as President of the said Union,
PADDY SULLIVAN, individually and as an officer of
said Union, and HYMAN BERNSTEIN, individually
and as business agent of said Union, all of 265 West
14th Street, New York City,

Petitioners,

against

HYMAN WOHL and LOUIS PLATZMAN,

Respondents.

**PETITION FOR REHEARING OF ORDER GRANTING
THE WRIT OF CERTIORARI TO THE COURT OF
APPEALS OF THE STATE OF NEW YORK AND
REVERSING THE JUDGMENT OF THE COURT
OF APPEALS OF THE STATE OF NEW YORK
AND BRIEF IN SUPPORT THEREOF.**

HYMAN WOHL,
LOUIS PLATZMAN,
Respondents in Person.

Of Counsel:

JOSEPH APFEL,
ARTHUR STEINBERG.

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CONCLUSION—The rehearing of the order granting the writ of certiorari and reversing the judgment of the Court of Appeals of the State of New York should be granted and the judgment of the Court of Appeals should be affirmed	20
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Gitlow v. New York, 268 U. S. 652	12
Goldfinger v. Feintuch, 276 N. Y. 281	11, 12
Gompers v. Buck Stone and Range Co., 221 U. S. 418 ..	14
Grosjean v. American Press Co., 297 U. S. 233	12

Thus, this Court in passing upon the application for the writ of certiorari, reversed the determination of the highest Court of the State of New York, without the respondents having had an opportunity to present fully their version of the case and the abundance of authority both from this Court and the State Courts in support of the judgment rendered in favor of the respondents. The only brief submitted by respondents was in opposition to the original writ of certiorari and there the brief was based principally upon the jurisdictional defect of the application and in view of that, the respondents only touched very lightly upon the questions of labor law involved.

The application by the petitioners was based upon a distorted version of the evidence adduced at the trial and of the findings of fact and conclusions of law. In their petition and brief, they relied upon a set of facts which does not exist as far as the issues in this case are involved.

Briefly, the material facts pertaining to this action are as follows:

The respondents for many years have earned a livelihood, each working alone in the sale of bakery products to retail stores. Each of the respondents purchased his products from various bakers and in turn sold them to retail store keepers (R. 47, 48). A representative of the Union approached the respondents and demanded that each of them employ a Union man one day per week at the rate of \$9.00 per day. The respondents refused upon the ground that they could not afford to do so and also that they had been working alone for many years without any assistance of any kind and did not require the services of any person other than themselves in the normal conduct of their business (R. 70, 71, 103, 115). The Union representatives threatened the respondents that unless they furnished such employment the Union would picket their customers and threatened to picket the bakeries that sold them products. Immediately after the respondents' refusal to acquiesce to

these demands the Union caused pickets to picket some of the bakeries from whom the respondents purchased their products for resale and also threatened a number of customers of the respondents with picketing in the event they would continue to do business with the respondents (R. 48, 49).

The Trial Court found that the immediate and primary purpose sought to be accomplished by the Union was to compel the respondents to employ help they did not need or require in the conduct of their business. The Court in its opinion said: "The proof is that the defendant threatens to picket these manufacturers and the various customers of the plaintiffs unless each of the plaintiffs employ a member of the defendant union one day a week to assist them" (R. 180). The Union introduced some evidence concerning general trade practices involving peddlers and the effect of peddling on the standards maintained by Union workers and sought to justify their demands upon the respondents by relying upon a belated claim of alleged evils of the peddler system. However, the Court found that the primary purpose of the Union was to compel the respondents to hire unnecessary help—a practice indulged in by many Unions in the State of New York and which has been condemned as being an unlawful purpose. The attempt of the Union to change its position after litigation was commenced by creating a straw man in the peddling situation which they alleged existed, was insufficient to deter the Trial Court from determining the true intent of the combination. The Trial Court refused to find, at the request of the Union, that the purpose of this picketing was to eradicate the peddler system. The Union requested the Court to find that it had "solely acted with the desire and purpose of maintaining Union wages, hours and conditions and in the definite belief that the extension of the peddler system, uncontrolled and unregulated, already has partially weakened the maintenance of this Union's wages,

etc." (R. 35, 36). The Union further requested the Court to find "that the defendants in acting as hereinafter mentioned did so solely with the view of attaining the aims and purposes of the Union heretofore mentioned and to promote the welfare of bakery drivers" (R. 38). This, the Court refused to find as the uncontradicted evidence clearly showed that the true purpose of the Union was to force defenseless and helpless independent dealers to pay monies for services which were not required in their business. Other efforts of the Union to have the Court find that the sole purpose of the picketing was to remove the peddler system and that the action of the Union "could reasonably be expected to aid" in this purpose, were refused (R. 42). The findings of the Trial Court were affirmed on appeal and established the fact that the purpose of the demands made upon the respondents was to compel them to hire unnecessary help and that inasmuch as they had employed no help any picketing in furtherance of this purpose was unlawful. In attempting to justify their demands, the Union relied upon general trade conditions regarding the peddler system. Some of these general conditions are included among the findings. However, none of them show that the purpose of the picketing was to cure such alleged evil, despite the fact that the petitioners in their application stretched and distorted the findings to make it appear that it did. The fact is that the Court expressly refused to find that to be the purpose of the picketing with respect to these respondents. The Court saw through the veil of this sham defense, and that it properly perceived the real purpose of the picketing, is borne out by the fact that the Union did not picket generally in the trade protesting against the alleged evils of the peddler system, as other unions have done. Instead it tried to force these respondents to pay monies for unnecessary help. The reason for the picketing was fixed by the mouths of the representatives of the Union (R. 71, 103). They did not advise the

respondents that they were a menace to Union standards. All they discussed and tried to obtain was employment, the respondents did not need or desire to furnish.

Grounds for Rehearing.

(a) The respondents did not have an opportunity to present to this Court all the material facts in support of the judgment they had obtained, as well as the authorities in support thereof.

(b) The petitioners' application was based upon facts not found in the record and upon a misstatement and distortion of the testimony and findings of fact and conclusions of law.

(c) Petitioners made it appear that the New York Court of Appeals favored the granting of an injunction restraining picketing where no employer and employee relationship existed. This is not the fact. That Court restrained picketing when no employer or employee relationship existed only where the purpose of picketing was to accomplish an unlawful end.

(d) The sole question involved herein was whether an employer may perform all his work with his own hands without being molested by picketing by a Union which seeks to compel an employer to refrain from working part of the time and furnishing such employment to a member of the Union. This Court has held that such question is one of local policy solely for the highest Court of the particular state where such case arises. The local policy of that State which will not be interfered with by this Court (*Senn v. Tile Layers Protective Union, Local No. 5*, 301 U. S. 468).

(e) Will picketing in furtherance of an unlawful purpose be permitted under the protection of freedom of speech?

(f) This Court based its reversal of judgment on the case of *American Federation of Labor v. Swing* (No. 56, October Term, 1940) on the theory that peaceful picketing is permissible where no employer or employee relationship exists. It is submitted that the *Swing* case has no application to the case at bar because the absence of an employer and employee relationship will not sustain picketing where it is for an unlawful purpose. The New York Court of Appeals has for many years followed the law as laid down in the *Swing* case, except in situations where employers have conducted their business without help of any kind, the said Court has restrained all efforts of labor unions to coerce such employers into hiring unnecessary help in their business.


These grounds are more fully dealt with in the brief hereto annexed.

The Effect of the Reversal Upon the Multitudes of Small Business Enterprises in the State of New York and Its Resulting Social Evil.

This dispute arose in the City of New York with its more than several millions of inhabitants. New York City, the largest city in the world, is a highly industrialized and commercialized community. In the past five years, during the rapid rise of labor unions throughout the country, Unions have also made marked progress in the City of New York. As Unions grew in power and increased their membership rolls, the number of unemployed members of unions rose. It is common knowledge that within the City of New York there are situated tens of thousands of individuals operating small businesses alone without hiring any help except for occasional assistance of a spouse or a child. Included among such businesses are numerous retail stores and small one-man businesses. Unions in an effort to alleviate their unemployment made it a practice

to compel persons who were operating a one-man business without help, to hire unemployed members of the Union anywhere from one day a week to six days per week throughout the year. The mere threat of a picket was sufficient in many instances to compel acquiescence to the demands of the Union. Such activities had no immediate and reasonable relation to the lawful Union objectives to increase wages and to secure more favorable terms of employment as far as hours, vacations, sick leave, etc., were concerned. The great power of these combinations over a small business man or retailer was more than sufficient in most cases to compel such small retailer or businessman to hire help which the Union demanded be employed, despite the fact that such employer had operated for many years without any help and in some cases the business did not operate profitably. In fact, such conduct on the part of some Unions amounted to nothing more than extortion. The Courts of the State of New York in shaping the public policy best suited to the inhabitants of that State declared that policy to be that where a person conducted a business without employing any employees a Union could not picket such employer for the purpose of compelling him to hire unnecessary help. In establishing this public policy the Courts of the State of New York did not prohibit picketing for all purposes where such employers were affected. The prohibition against picketing was directed solely against Unions when they sought to compel the hiring of unnecessary help. This was done for the purpose of eradicating the great social evil whereby one class of individuals combined into Unions were able, through the great power which such combinations gave them, to force tens of thousands of small business men to part with hard earned moneys and small profits which long hours of labor brought to them, in return for services which they did not require. It was inevitable that any State which would permit the power of trade unions to be exerted for such purposes would deprive small businesses of an opportunity of thriving.

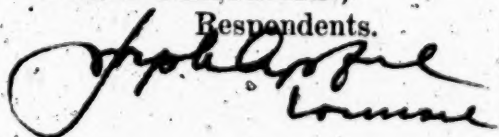
ing and growing and in many cases permit an unwarranted drainage of capital from such small businesses to the point where bankruptcy and insolvency would result. In the interests of a sound public policy Unions were not permitted to use their power against a one-man business for the purpose of dictating how many employees or amount of employment such business should furnish. Thus, the constitutional right of such small business men to conduct their businesses without unjustified interference was protected.

By one stroke this Court has shattered this long established public policy and has removed the barrier of protection which these tens of thousands of small merchants had. Hereafter these business men will be left to the mercy and uncontrolled demands of trade unions. This will mean a return to the chaotic conditions which formerly prevailed whereby Unions would foist unnecessary help upon such helpless employers, the extent of their demands being based upon the bank balance or capital of the small enterprise. Thus the small savings or small income of such businesses will again be subject to unlimited raids and absorption by unscrupulous Unions. This can only lead to the eventual extinction of this class of proprietor and great social unrest and evil. 

Statement by Counsel.

This application for rehearing is presented in good faith and not for the purpose of delay pursuant to Rule 33 of the Rules of the Supreme Court adopted February 13, 1939.

HYMAN WOHL,
LOUIS PLATZMAN,
Respondents.



Of Counsel:

JOSEPH APPEL,
ARTHUR STEINBERG.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1940.

BAKERY AND PASTRY DRIVERS AND HELPERS LOCAL 802 OF THE
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, PETER
SULLIVAN, individually and as President of the said
Union, PADDY SULLIVAN, individually and as an officer
of said Union, and HYMAN BERNSTEIN, individually and
as business agent of said Union, all of 265 West 14th
Street, New York City,

Petitioners,

against

HYMAN WOHL and LOUIS PLATZMAN,

Respondents.

BRIEF IN SUPPORT OF PETITION FOR REHEARING.

POINT I.

The determination of the New York State Court of Appeals that the respondents may work alone without employing help and that the petitioners may not picket to compel the respondents to abstain from performing all their work, is binding on this Court.

The uncontradicted evidence shows that the Union sought to compel the respondents to abstain from performing all their work themselves. The Union demanded that the re-

spondents furnish one day's employment per week to members of the Union. The prohibition against picketing to effect such a purpose is solely a question of local policy to be determined by Court of Appeals of New York.

In an analogous situation this Court recently in the case of *Senn v. Tile Layers Protective Union*, 301 U. S. 468, held that the law of the state as declared by the highest Court determines whether such activity may be permitted and that it was no concern of this Court what the public policy of the state was in this respect. There, Justice Brandeis said: "Whether it was wise for the state to permit the Union to do so is a question of its public policy—not our concern".

It is submitted that the reversal of judgment obtained by the respondents is in direct conflict with the principles of law recognized in the *Senn* case and intrudes into the state's realm of policy making. The Court further recognized the fact that it was for the State Court to decide whether such activity on the part of the Union, in furtherance of such an objective, was for a lawful or an unlawful end.

POINT II.

The New York Court of Appeals has held that picketing to compel an employer who operates a business alone to hire unnecessary help is in furtherance of unlawful purpose.

See:

Thompson v. Bockhout, 273 N. Y. 390;

Luft v. Flove, 270 N. Y. 640;

Boro Park Sanitary Live Poultry Market v. Heller,
280 N. Y. 481;

Goldfinger v. Feintuch, 276 N. Y. 281.

In the latter case the Court in referring to the *Thompson* and *Luft* cases declared that the "purpose" of picketing to compel the hiring of unnecessary labor "was unlawful".

POINT III.

Picketing in furtherance of an unlawful purpose may not be protected under the guise of freedom of speech.

Chief Justice Stone, in a concurring opinion in the recent case of *Hague, et al. v. C. I. O.*, 307 U. S. 496, said:

"It has been explicitly and repeatedly affirmed by this Court, without a dissenting voice, that freedom of speech and of assembly for any lawful purpose are rights of personal liberty secured to all persons, without regard to citizenship, by the due process clause of the Fourteenth Amendment. *Gitlow v. New York*, 268 U. S. 652; *Whitney v. California*, 274 U. S. 357; *Fiske v. Kansas*, 274 U. S. 380; *Stromberg v. California*, 283 U. S. 359; *Near v. Minnesota*, 283 U. S. 697; *Grosjean v. American Press Co.*, 297 U. S. 233; *De Jonge v. Oregon*, 299 U. S. 353; *Herndon v. Lowry*, 301 U. S. 242; *Lovell v. Griffin*, 303 U. S. 444."

And, in the remaining portion of his opinion he reiterated the fact that freedom of speech and freedom of assembly is granted to all persons "for any lawful purpose".

Therefore, where the purpose be an illegal one, it is evident that freedom of speech cannot be relied upon to protect those who use picketing as a means of attaining an illegal objective.

Such a prominent guardian of civil liberty as Justice Cardozo, while sitting on the New York Court of Appeals bench, concurred in two outstanding opinions wherein the right of picketing to accomplish an illegal purpose was withdrawn from labor unions.

In the oft quoted case of *Exchange Bakery & Restaurant v. Rifkin*, 245 N. Y. 263, the Court said:

"Where the end or the means are unlawful and the damage has already been done the remedy is given by criminal prosecution or by recovery of damages at law. Equity to be invoked only to give protection for the future. To prevent repeated violation, threatened or probable, of complainant's property rights an injunction may be granted. * * * Freedom to conduct a business, freedom of engaging in labor, each is like a property right. Threatened and unjustified interference with either will be prevented. * * * A combination to strike or to picket an employer's factory to the end of coercing him to commit a crime, or to pay a stale or disputed claim, would be unlawful in itself, although, for an individual, his intent in leaving work does not make wrongful the act otherwise lawful. His wrong, if wrong there be, would consist of some threat, of something beyond the mere termination of his contract with his employer. Likewise a combination to effect many other results would be wrongful. Among them would be one to strike or picket a factory where the intent to injure rests solely on malice or ill will. Another's business may not be so injured or ruined. It may be attacked only to attain some purpose in the eye of the law thought sufficient to justify the harm that may be done to others."

In *Interborough Rapid Transit Co. v. Lavin*, 247 N. Y. 83, the Court held:

"In this state the courts may interpose their mandates between contesting parties only where there is attempt to effectuate an unlawful purpose, or to effectuate a lawful purpose by unlawful means. The privilege of freedom of contract may not be destroyed by

force or fraud. Against the threatened use of such means the courts must exercise their full powers unflinchingly. Business and property rights in their broadest sense should be immune from malicious interference. They rest upon established principles of law; they are subject to attack within limits fixed by law."

In another case, *Nann v. Raimist*, 255 N. Y. 307, Mr. Justice Cardozo, after citing and quoting from *Exchange v. Riskin*, said that a court of equity

"intervenes in those cases where restraint becomes essential to the preservation of a business or of other property interests threatened with impairment by illegal combinations or by other tortious acts, the publication of the words being merely an instrument and incident."

This Court has also held likewise.

See:

Gompers v. Buck Stone and Range Co., 221 U. S. 418;

Darchy v. Kansas, 272 U. S. 306, 311;

Truax v. Corrigan, 257 U. S. 312.

That this should be the law is sound, because freedom of speech or picketing should not be permitted to assist those who pervert its legitimate use by employing it for objectives condemned by society in general. Otherwise, there will be no protection in cases where a representative of the Union might demand a lump sum of money under the threat of picketing if an employer under such circumstances were to refuse to become a party to such attempted extortion. It is inconceivable that any society would permit such representatives of labor to picket the premises of an employer under the pretext or feigned issue that he was unfair.

In the case at bar, after litigation was commenced, the Union sought to justify its conduct under the pretext that it was thereby seeking to solve the problem raised by the peddler system. However, the Trial Court refused to find that that was their purpose and, based upon the uncontradicted evidence, found that the primary purpose was to compel the hiring of unnecessary labor. Mr. Justice Holmes recognized this in *Aikens v. Wisconsin* (195 U. S. 194) where he said:

"When the acts consist of making a combination calculated to cause temporal damage, the power to punish such acts when done maliciously cannot be denied because they are to be followed and worked out by conduct which might have been lawful if not preceded by the acts. No conduct has such an absolute privilege as to justify all possible schemes of which it may be a part. The most innocent and constitutionally protected of acts or omissions may be made a step in a criminal plot and if it is a step in a plot, neither its innocence nor the constitution is sufficient to prevent the punishment of the plot by law."

Mr. Justice Brandeis, in *Whitney v. California*, 274 U. S. 357, recognized the fact that freedom of speech might be suppressed in cases where reasonable ground existed to fear that serious evil would result if free speech was practiced. It cannot be denied that permitting picketing for the purpose of compelling small storekeepers and business men to hire unnecessary help will result in a great social evil.

It is significant to note that the Union in this case did not embark upon a program of picketing for the purpose of eradicating the so-called evil of peddler system, as was the case in *Milk Wagon Drivers Union v. Lake Valley Farm Products*, 311 U. S. 91, but the picketing was undertaken here for the sole purpose of compelling the respondents

to employ unnecessary labor. The power of a state to protect the property of its residents from unjustifiable interference cannot be doubted (*Carlson v. California*, 310 U. S. 106; *Thornhill v. Alabama*, 310 U. S. 88).

Freedom of speech is not an absolute right and is subject to modification or qualification in the interest of the society in which employer and employee exist (*Thornhill v. Alabama*, *supra*). In determining when the right to freedom of speech is to be abridged or limited the "task falls upon the Courts to weigh the circumstances and to appraise the substantiality of the reasons advanced" (*Schneider v. Town of Irvington*, 308 U. S. 147).

POINT IV.

American Federation of Labor v. Swing, et al., has no application to the facts of this case.

This Court in reversing cited the *Swing* case apparently relying upon the claim made by the petitioner. Union that the New York Court of Appeals affirmed the injunction on the ground that picketing was not permissible where no employer or employee relationship existed. It is submitted that this was not the ground upon which the injunction nor the affirmance was placed. Peaceful picketing was enjoined because the declared public policy of the State of New York does not permit a labor union to picket to compel an employer, who works alone in his business, to hire unnecessary help. The test is not whether there is an employer or employee relationship. The test is what purpose was the Union seeking to accomplish. The New York Court of Appeals has permitted picketing against a shopkeeper who had no help where the purpose of the picketing was to advise the public that this proprietor was selling a non-union product (*Goldfinger v. Feintuch*, *supra*). The New York Court of Appeals has for many years followed

the law as laid down in the *Swing* case. In fact, in a very recent decision, decided March, 1940, the New York Court of Appeals in a case identical to the *Swing* case held that picketing was permissible, despite the fact that no employer or employee relationship existed between those who were picketing and the employer (*May's Furs & Ready-Wear v. Bauer*, 282 N. Y. 331).

The petition and brief submitted by the Union herein would have this Court believe that the New York Court of Appeals has adopted a very narrow and unjustifiable position. On the contrary, that Court has blazed the trail in the past years in support of the rights of workers and has continued as the outstanding champion of the civil liberties of workers.

In the *Swing* case the only question presented was whether a state had a right to prohibit members of a union from picketing an employer's premises where the employer hired workers who were not members of the Union. Conceivably such an objective is a lawful one and our state was among the first to permit picketing for such purposes.

In another recent case by the New York Court of Appeals, *Baillis v. Fuchs*, 283 N. Y. 130, picketing was permitted although no employer or employee relationship existed.

The Union herein in its petition for a rehearing quoted from the case of *Opera-on-Tour v. Weber* (285 N. Y. 348) where the New York Court of Appeals in referring to its decision in this case, as well as *Thompson v. Boekhout*, said:

"We have held that the attempt of a union to coerce the owners of a small business, who ~~was~~ running the same without an employee, to make employment for an employee, was unlawful objective and that this did not involve a labor dispute (*Thompson v. Boekhout*, 273 N. Y. 390). So, too, in a case that we unanimously decided, we held that it was an unlawful labor objec-

tive to attempt to coerce a peddler employing no employees in his business and making approximately thirty-two dollars a week, to hire an employee at nine dollars a day for one day a week (*Wohl v. Bakery and Pastry Drivers*, 284 N. Y. 220)."

In their petition, great stress was laid upon the word "coerce" and claim was made that thereby the Court of Appeals branded peaceful picketing as coercion. Furthermore, the petitioners distorted the clear meaning of the decision by stating "Stripped of the embellishments of legal art, the decision of the Court of Appeals in the case at bar is now plainly revealed as a holding that the defendant Union's peaceful and orderly efforts to inform the public of its policy with regard to the peddler system constitute 'an unlawful labor objective', and are therefore beyond the pale of constitutional protection." Petitioners, by their own interpretation, state that the Court of Appeals held that peaceful picketing to inform the public of the evils of a peddler system is an unlawful objective. The Court of Appeals *did not* hold this to be the law. That Court did not say that picketing in such cases was unlawful. The only point at issue was whether the respondents could be compelled to hire unnecessary help. The word "coerce" was used in the sense that the Court would not permit picketing, lawful in itself, to be used to foist unnecessary help upon the respondents. The mere fact that a labor union might feel that a peddler system is injurious to its members does not give it a right to extort money from small business men, nor does it give it the right to use pickets for the purpose of compelling such employers to commit a crime, or to fix the prices of commodities, or for many other reasons which have been condemned as contrary to the wellbeing of our society. The issue in this case was not whether peaceful picketing was permissible to expose the evils of a peddler system. The only issue was whether the respondents could be coerced into hiring the amount of help the Union sought to impose upon them.

It was only after litigation commenced that the Union first raised the peddler system in an attempt to justify its legal conduct. However, the uncontradicted testimony, as well as the findings of the Trial Court, as affirmed by the Appellate Courts, showed that the Union really relied upon the peddler system as a pretext, and that it was not advanced in good faith. This is evidenced by the fact that instead of conducting a program of picketing throughout the state generally to enlighten the public as to the evils of the peddler system, the Union merely demanded employment under the penalty of injuring the respondents' business. As was said in the case of *Auburn Draying Co. v. Wardell*, 178 App. Div. 270, affirmed 227 N. Y. 1:

"The general argument of good to labor conditions cannot be made a cloak to shield the actors from the consequences of acts done in furtherance of the unlawful purpose. * * * If it be unlawful, it may not be shielded behind general arguments for real or fancied good to organized labor".

To the same effect, see also

Vonnegut v. Toledo, 263 Fed. 192, 202.

POINT V.

If it be a fact that the reversal of this Court was based upon its belief that picketing against the peddler system was prohibited, then the decision should be clarified as it is easily susceptible of construction that the employers operating without help can be subjected to picketing to compel them to hire employees even though not required.

This Court in its per curiam opinion reversed and merely cited the *Swing* case. The natural inference is that a state

may not prohibit picketing where a Union demands that an employer operating without help hire the number of employees dictated by the Union. To permit the decision to remain in its present form removes the protection given by the Courts of New York State to its numerous small proprietors of businesses.

This will undoubtedly lead to a return of chaotic conditions where unions were the sole persons to determine how much help such proprietors should employ. It is of paramount importance that this point be cleared up promptly so that the Courts of New York may be informed whether or not they still retain the power to prohibit such practices.

CONCLUSION.

The rehearing of the order granting the writ of certiorari and reversing the judgment of the Court of Appeals of the State of New York should be granted and the judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

HYMAN WOHL,
LOUIS PLATZMAN,
Respondents.

Of Counsel:

JOSEPH APPEL,
ARTHUR STEINBERG.

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CHARLES ELMORE GOSLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM 1940

No. 901

BAKERY AND PASTRY DRIVERS AND HELPERS LOCAL 802 OF
THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, PETER
SULLIVAN, individually and as President of the said
Union, PADDY SULLIVAN, individually and as an officer
of the said Union, and HYMAN BERNSTEIN, individually
and as business agent of said Union, all of 265 West
14th Street, New York City,

Petitioners,

against

HYMAN WOHL and LOUIS PLATZMAN,

Respondents.

BRIEF FOR PETITIONERS

✓ EDWARD C. MAGUIRE,
Attorney for Petitioners.

Of Counsel:

EDWARD C. MAGUIRE

SAMUEL J. COHEN

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BAKERY AND PASTRY DRIVERS AND HELPERS LOCAL 802 OF
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SULLIVAN, individually and as President of the said
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of the said Union, and HYMAN BERNSTEIN, individually
and as business agent of said Union, all of 265 West
14th Street, New York City,

Petitioners,

against

HYMAN WOHL and LOUIS PLATZMAN,

Respondents.

BRIEF FOR PETITIONERS

I

Opinions of Courts Below

The Supreme Court of the State of New York made findings of fact and conclusions of law (R. 46-60) and rendered an opinion in writing (14 N. Y. Supp. [2nd] 198; no official report) (R. 179, 180). The majority of the Appellate Division of the Supreme Court of the State of New York, First Department, wrote no opinion. The minority opinion was written by Mr. Justice Callahan, Mr. Justice Dore concurring (259 App. Div. 868, 19 N. Y. Supp. [2nd] 811) (R. 189, 190). The Court of Appeals of the State of New York wrote no opinion (284 N. Y. 788).

II

Jurisdiction

The statutory provision believed to sustain the jurisdiction of this Court to review the judgment of the Court of Appeals of the State of New York is Section 237-b of the Judicial Code of the United States (Title 28, U. S. C., Sec. 344-b).

III

Statement of the Case

A. The Judgment to be Reviewed

The writ of certiorari granted to the petitioners by this Court brings up for review a judgment of the New York State Supreme Court which enjoins the admittedly peaceful and orderly picketing of the members of a labor union in the course of a labor dispute. The plaintiffs in the action were Hyman Wohl and Louis Platzman, the respondents herein, and the defendants were Bakery and Pastry Drivers and Helpers Local 802 of the International Brotherhood of Teamsters, a labor union affiliated with the American Federation of Labor, and Peter Sullivan, Paddy Sullivan and Hyman Bernstein, the officers of the said union, the petitioners herein. The nature of the acts prohibited by the said injunction, and of the labor dispute out of which the acts arose, will hereinafter be considered in detail.

On June 2, 1941, this Court granted the petition for a writ of certiorari herein, and upon granting the petition unanimously reversed the judgment of the Court of Appeals of the State of New York which upheld the injunction issued by the New York Supreme Court. The said petition was granted upon the petitioners' application for

rehearing, the petition having previously been denied for failure to show that the Federal question had been raised in the court below. The order of this Court granting the petition was stated as follows:

"Per Curiam: The petition for rehearing is granted. The order denying certiorari is vacated and the petition for writ of certiorari is granted. The judgment is reversed. American Federation of Labor v. Swing, No. 56, decided February 10, 1941" (313 U. S. _____).

The aforesaid judgment is presently before this Court for review by reason of the granting of the respondents' application for rehearing.

B. The Acts Enjoined

The conduct prohibited by the injunction issued by the New York State Supreme Court consisted solely of the peaceful publicizing of the contentions of the defendant labor union with respect to the merits of a labor dispute.

No activity on the part of the defendant union other than the peaceful and orderly use of the spoken and written word has ever been involved in the case at bar.

In protest against the evils of the peddler system, a method of distribution gravely menacing the welfare of labor organizations, the petitioners engaged in peaceful picketing for the purpose of enlisting the support of the public.

The specific object of the union was to induce the respondents, who worked seven days each week without respite, to hire members of the union as relief drivers for one day of the week, so that the working conditions in the baking industry achieved by the union would not be destroyed.

The placards displayed by the union in the course of the picketing in question were in the following language:

4

"HYMAN WOHL

**A BAKERY ROUTE DRIVER WORKS SEVEN DAYS
A WEEK. WE ASK EMPLOYMENT FOR A UNION
RELIEF MAN FOR ONE DAY. HELP US SPREAD
EMPLOYMENT & MAINTAIN A UNION WAGE
HOUR AND CONDITION.**

**BAKERY & PASTRY DRIVERS & HELPERS
LOCAL 802 I. B. OF T. affiliated with
A. F. L." (R. 57).**

Admittedly, there was no misrepresentation or fraud practiced by the union by the use of these placards, nor was it claimed by the plaintiffs that there was any misrepresentation or fraud practiced in any other manner (R. 55).

The only picketing which took place occurred in the public streets in the neighborhood of two wholesale bakeries where the plaintiffs had their headquarters and obtained the products which they distributed. These two bakeries were known as Diamond Baking Co., Inc., and Bernstein & Dickerman. The entire picketing in question was extremely brief in duration, and lasted in all about two hours on each of two days (R. 57).

Apart from such picketing, the only labor activity in which the defendant union engaged in reference to this dispute consisted of requesting about five of the retail dealers, who purchased the products peddled by the plaintiffs, not to deal with the plaintiffs, and likewise requesting the two bakery firms above mentioned not to distribute baking products through such peddlers. There was never any picketing of these retail dealers or bakers.

C. The Peddler System

The method of distribution known as the peddler system merits careful consideration here, for examination of the social and economic consequences thereof demonstrates conclusively that there is no reasonable basis upon which to support the New York State Court's absolute prohibi-

tion of utterance critical of that type of enterprise. Assuming the possibility of a difference of opinion with respect to the merits of the peddler system; it is nevertheless clear that reasonable persons may legitimately hold the opinion that the system is socially and economically undesirable and that it should be opposed. Accordingly, there is no factual justification for branding peaceful opposition to the peddler system as an "illegal objective" and prohibiting the exercise of the privilege of free speech by opponents of that system. On the contrary, the facts which appear in the record definitely establish the existence of sound economic and social reasons for opposing the peddler system and for protecting the constitutional privileges of its opponents.

Although in some forms peddling has undoubtedly existed for many years, in its present form peddling is an economic phenomenon which has only recently become a menace to the standards of wages and working conditions achieved by labor organizations.

After the enactment of the Social Security and Unemployment Insurance laws the number of peddlers in New York City, in the baking industry alone, rose from 50 to more than 500 (R. 50, 51).

During the 18-month period immediately preceding the labor dispute here in question, at least 150 drivers were discharged, and were required to sever connections with the employers by whom they had been employed, unless they undertook to become peddlers (R. 51).

The peddler, although economically subservient to the manufacturers whose products he distributes, assumes the role of an independent entrepreneur, buying bakery products from manufacturers and selling to retail dealers. Technically, the peddler is not an employee; realistically, his economic position is identical. Unfortunately, however, the peddler, insulated as he is by the honorific title of independent entrepreneur, is deprived of the ordinary benefits provided for employees.

The economic status of the peddlers in the case at bar may be considered typical. The plaintiff Wohl had a gross income of approximately \$32 per week, and the plaintiff Platzman a gross income of approximately \$35 per week, out of which income the plaintiffs were required to pay the maintenance and operation costs of the trucks used by them for peddling, and out of which they were also obliged to carry outstanding credits on their routes (R. 56).

It was established upon the trial, without dispute, and found by the Trial Court, that the peddlers in the case at bar, and peddlers generally, are not covered by Social Security benefits, Unemployment Insurance, or Workmen's Compensation Insurance (R. 53), and that the plaintiffs did not carry public liability or property damage insurance on the trucks which they operated (R. 53, 54) and that the plaintiffs did not conform to any uniform standard of wages or hours, but worked seven days each week (R. 56).

The trucks operated by the plaintiffs were registered in their wives' names (R. 55, 56).

It is obvious that the uncertain living earned by peddlers such as the plaintiffs is barely at the subsistence level, and that the slightest misfortune is sufficient to plunge such persons far below that level. In this desperate plight it is not reasonably to be expected that the peddlers will maintain decent standards of working conditions. In their insecure and unorganized condition, the peddlers not only reduce their own standards to the lowest possible level, but also inevitably reduce the standards in the entire baking industry.

It is axiomatic that conditions in one part of an industry affect other parts, and that labor organizations must, in order to preserve existing standards, prevent deterioration elsewhere. The menace of the peddler system to the defendant union in the case at bar is obvious, and it is likewise obvious that if the union is throttled when it seeks to raise its voice in opposition to the peddler system, the number of peddlers will constantly increase as manufac-

turers take advantage of this cheaper method of distribution. The Trial Court definitely found that the peddler system was a direct menace to the union:

"32. That 'peddlers' or independent jobbers are not covered by Workmen's Compensation Insurance, Social Security or Unemployment Insurance, and that an employer who changes his method of distribution from using employee drivers to 'peddlers' or independent jobbers saves considerable by way of premiums and taxes.

33. That if those who are presently employers and parties to contracts with the unions upon the expiration of those contracts, to survive, are required to adopt the 'peddler' system of distribution, then the wages, hours, working conditions, six-day week, etc., attained by the union after long years of struggle will be destroyed and lost" (R. 52).

D. The Means Adopted by the Union

The program of the union in the case at bar was undertaken in good faith and was in no respects arbitrary or coercive. Primarily, the union sought to induce the peddlers to accept membership in the union (R. 52). Peddlers who applied for membership were granted all the rights and privileges of other members (R. 53). Peddlers who refused to become members were asked to work six days per week, instead of seven, and to hire a union relief driver for the seventh day (R. 53). Such relief drivers were to be paid only for that portion of the day during which they worked (R. 54).

Picketing for the purpose of enlisting public support was resorted to only when the steps previously outlined had failed.

Both of the plaintiff peddlers had applied for membership in the defendant union, and Platzman actually became a member but was delinquent in the payment of his dues (R. 52, 53, 149-151).

Because of the refusal of the plaintiffs to maintain union standards by engaging a union driver for one day out of

seven, the peaceful picketing above mentioned was conducted by the union (R. 56, 57).

We are content to characterize the picketing in question in the very language used by the Trial Court in stating its findings herein:

"69. That the aforementioned placards were truthful in all respects, and contained no misstatements or misrepresentations.

70. That the picketing so conducted aforementioned, was done in a peaceful and orderly manner, without violence or threat thereof, and in no respect was it or did it create disorder" (R. 58).

E. The Grounds Upon Which the Injunction Was Based

Upon the facts aforesaid, the Trial Court concluded:

"2. That the plaintiffs are the sole persons required to run their business and therefore they are not subject to picketing by a union or by the defendants who seek to compel them to employ union labor" (R. 59).

Accordingly, the Trial Court issued a permanent injunction absolutely enjoining the aforesaid activities of the defendant union (R. 61, 62; 14 N. Y. Supp. [2nd] 198, no official report).

Upon appeal by the defendants to the Appellate Division of the Supreme Court of the State of New York, First Department, the judgment of the Trial Court was affirmed by a divided court (R. 185-189; 259 App. Div. 868, 194 N. Y. Supp. [2nd] 811). The majority of the Appellate Division wrote no opinion (R. 188-189). The dissenting opinion of Mr. Justice Callahan, in which Mr. Justice Dore concurred, held that, despite the absence of an employment relationship between the parties, the union was lawfully entitled to picket in a peaceful manner in defense of its vital interests.

Upon appeal to the Court of Appeals of the State of New York, the judgment below was affirmed without opinion (R. 192-196; 284 N. Y. 788).

IV

Specification of Errors to be Urged

The Court of Appeals of the State of New York erred in holding that an absolute injunction against peaceful and orderly picketing could properly issue merely because no employment relationship existed between the members of the defendant union and the peddlers and wholesale and retail bakers. The injunction violated the First and Fourteenth Amendments of the Constitution of the United States in that it absolutely prohibited the exercise of the constitutional privilege of freedom of speech. The record being admittedly devoid of evidence of any wrongful activity on the part of the defendants, characterization by the State Court of the defendants' conduct as illegal was utterly unwarranted, and furnished no basis for curtailment of the constitutional privilege. Such is the single but fundamental error here urged.

V

Summary of Argument

- A. The activities of the defendants were in no respect wrongful.
 - 1) No statute was violated; per contra the conduct prohibited is in accord with the legislative policy of the State of New York;
 - 2) No violence was committed;
 - 3) No fraud was committed;
 - 4) No disorder was created;
 - 5) No coercion was practiced.
- B. The alleged common law policy of the State of New York is not controlling in the determination of the constitutional question here involved.

C. No factual basis for prohibiting the exercise of the privilege of free discussion exists in the case at bar.

- 1) The purpose sought to be accomplished was not contrary to public welfare;
- 2) The means adopted to accomplish the purpose were not contrary to public welfare.

D. The judgment of the State Court inaugurates judicial censorship of speech in labor controversies.

E. Conclusion: The judgment of the Court of Appeals of the State of New York should be reversed.

VI

ARGUMENT

A. The activities of the defendant were in no respect wrongful.

B. No statute was violated; the conduct prohibited is in accord with the legislative policy of the State of New York.

The peaceful picketing conducted by the defendant union admittedly violated no statute of the State of New York. *Per contra*, examination of the statute books of that State shows that its Legislature has definitely expressed its approval of such conduct, and has forbidden injunctive interference therewith.

Section 876-a of the Civil Practice Act of the State of New York (L. 1935, Ch. 477, in effect April 25, 1935) is modeled after the Federal Norris-LaGuardia Act (29 U. S. C., Secs. 101-115) and except for minor differences in language is identical with the Federal Act.

Section 876-a of the New York Civil Practice Act forbids any court or judge to grant injunctive relief, in any case

involving or growing out of a labor dispute, which prohibits the following acts, among others:

"(5) Giving publicity to and obtaining or communicating information regarding the existence of, or the facts involved in, any dispute, whether by advertising, speaking, picketing, patrolling any public street or any place where any person or persons may lawfully be, or by any other method not involving fraud, violence or breach of the peace."

"(8) Advising or notifying any person or persons of any intention to do any of the acts heretofore specified."

In defining the term "labor dispute" the statute expressly states in the following language that the disputants need not stand in the relation of employer and employee:

"(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, or concerning employment relations, or any other controversy arising out of the respective interests of employer and employee regardless of whether or not the disputants stand in the relation of employer and employee."

The above quoted statute does not purport to set forth an exclusive list of the labor activities which are permissible in the State of New York; it merely sets forth those activities which the Legislature of the State has deemed of sufficient importance to be worthy of special protection.

Accordingly, no matter how narrowly the statute be construed, it cannot possibly be said to forbid peaceful picketing of peddlers on account of the fact that such peddlers employ no helpers. Nor has there ever been such a judicial construction of the statute by any court of the State of New York.

We have referred to the above statute solely for the purpose of demonstrating that the conduct of the defendants is in direct accord with the public policy of the State of New York as expressed by its Legislature. It has never been contended in the case at bar that the statute *prohibits* the acts of the defendants here in question, and there has never been allegation or proof that any other statute has been violated.

2) No violence was committed.

The conduct of the defendants was admittedly peaceful in all respects. No act of violence of any nature was committed.

Upon the trial, the attorney for the plaintiffs made the following concession:

"The Court: Will you concede, however, that in the picketing so far as has been testified to, there were no acts of violence or threats of violence, disorderly picketing or misstatements?"

Mr. Apfel: "Conceded" (R. 148).

As has previously been noted, the Trial Court found:

"70. That the picketing so conducted aforementioned, was done in a peaceful and orderly manner, without violence or threat thereof, and in no respect was it or did it create disorder" (R. 58).

3) No fraud was committed.

We again refer to the above quoted concession made by the plaintiffs' attorney, upon the trial of this action, which covered fraud as well as violence, and which expressly admitted that the defendants had made no misstatements (R. 148).

The finding of the Trial Court in this respect is as follows:

"69. That the aforementioned placards were truthful in all respects, and contained no misstatements or misrepresentations" (R. 58).

4) No disorder was created.

The concessions of counsel and findings of the Trial Court which we have already examined show also that the defendants' conduct was not disorderly, the Trial Court having found that "in no respect was it or did it create disorder" (R. 58).

5) No coercion was practiced.

The foregoing analysis of the conduct of the defendants makes it obvious that the acts of the defendants were in no respect coercive, for the essence of coercion is the utilization of wrongful, as distinguished from peaceful, means of persuasion. To characterize peaceful persuasion as coercion is to use language arbitrarily, with complete abandonment of objectivity. It is clear that there was no factual basis for the belated characterization of the conduct of the defendants in the case at bar as "an attempt to coerce a peddler", which is found in the opinion of the New York Court of Appeals in the case of *Opera on Tour v. Weber*, 285 N. Y. 348, 357. The word "coerce", so used, is obviously a term of art, having no verifiable factual content, and serving merely to rationalize a legal conclusion. (See Frankfurter & Greene, *The Labor Injunction*, pp. 34-35, 61.)*

B. The alleged common law policy of the State of New York is not controlling in the determination of the constitutional question here involved.

It is the contention of the respondents that the common law policy of the State of New York forbids peaceful picketing conducted for the purpose of persuading one who engages no employees to hire members of a labor union. It is further contended that, by virtue of the dec-

* "Unwittingly a court may be pronouncing judgment upon the implications of a label, instead of weighing the elements of an industrial conflict as it actually transpired" (Frankfurter & Greene, *op. cit.*, p. 25).

laration of such policy, the New York State courts may prohibit the exercise of the constitutional privilege of freedom of speech, and that such judicial restraint of the privilege is not subject to review by this Court. The argument of the respondents is thus stated at page 11 of the respondents' brief in support of their application for rehearing:

"The prohibition against picketing to effect such a purpose is solely a question of local policy to be determined by Court of Appeals of New York."

The same argument was presented for determination and unequivocally answered by this Court in the case of *American Federation of Labor v. Swing*, 312 U. S. 321.

In the latter case it was alleged that the common law policy of the State of Illinois prohibited peaceful picketing, or peaceful persuasion, on the part of "strangers to the employer". Accordingly, it was asserted that the decree of the Illinois court enjoining such conduct could not be set aside by this Court. In disposing of the issue thus presented, this Court stated:

"The scope of the Fourteenth Amendment is not confined by the notion of a particular state regarding the wise limits of an injunction in an industrial dispute, whether those limits be defined by statute or by the judicial organ of the state. A state cannot exclude workingmen from peacefully exercising the right of free communication by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him. The interdependence of economic interest of all engaged in the same industry has become a commonplace. *American Foundries v. Tri-City Council*, 257 U. S. 184, 209. The right of free communication cannot therefore be mutilated by denying it to workers, in a dispute with an employer, even though they are not in his employ. Communication by such employees of the facts of a dispute, deemed by them to be relevant to their interests, can no more

be barred because of concern for the economic interests against which they are seeking to enlist public opinion than could be the utterance protected in Thornhill's case. 'Members of a union might, without special statutory authorization by a State, make known the facts of a labor dispute, for freedom of speech is guaranteed by the Federal Constitution.' *Senn v. Tile Layers Union*, 301 U. S. 468, 478" (312 U. S. 321, 325-326).

No sound reason for distinguishing the case at bar from the *Swing* case is to be found in the record.

A common law doctrine in New York, to the effect that the peaceful picketing of one who engages no employees is illegal, is no less an interference with the constitutional privilege of freedom of speech than an Illinois doctrine to the effect that picketing by "strangers to the employer" is illegal. The vice in each case is that the agency of the State arrogates to itself not merely the limited power to regulate but the unlimited power to prohibit absolutely.

The basic purpose of the constitutional guarantee is indeed defeated if in the name of local policy the State courts are granted authority to determine not only how one must speak but also what may be spoken. The gist of the guarantee has been compactly stated by Lord Justice Scrutton in *Rex v. Secretary of Home Affairs*, [1923] 2 K. B. 361, 382, in these words, quoted by Mr. Justice Brandeis in *Whitney v. California*, 274 U. S. 357, 377:

"You really believe in freedom of speech, if you are willing to allow it to men whose opinions seem to you wrong and even dangerous * * *"

To regulate the conditions of public utterance so as to prevent obscenity, incitement to violence, fraud or other criminal conduct is a proper function of the State. There can be no question that the exercise of the privilege of freedom of discussion is necessarily subject to such limitations. On the other hand, where speech is not used as a cloak for criminal conduct, it may not be proscribed by

the State merely because of disapproval of the end sought to be achieved. The essence of the constitutional guarantee is that it assures that error may be spoken as freely as truth, that unpopular thought may be voiced as freely as the accepted dogma of the day, to the end that an unfettered exchange of ideas by free men may produce and maintain a democratic society. It is therefore of the utmost importance that the State's limited power to regulate shall never be permitted to grow into an absolute power to destroy.

What we have said with reference to the power of the State generally applies a fortiori to a judicial organ of the State, purporting to express the policy of the State by a declaration of common law principles.

In *Cantwell v. Connecticut*, 310 U. S. 296, 304, this Court stated:

"In every case the power to regulate must be so exercised as not in attaining a permissible end, unduly to infringe the protected freedom."

This Court further stated, in the same opinion:

"Equally obvious is it that a state may not unduly suppress free communication of views, religious or other, under the guise of conserving desirable conditions" (310 U. S. 296, 308).

In *Herndon v. Lowry*, 301 U. S. 242, 258, this Court declared:

"The power of a state to abridge freedom of speech and of assembly is the exception rather than the rule and the penalizing even of utterances of a defined character must find its justification in a reasonable apprehension of danger to organized government. The judgment of the legislature is not unfettered. The limitation upon individual liberty must have appropriate relation to the safety of the state. Legislation which goes beyond this need violates the principle of the Constitution."

A declaration of "illegality" by a State Court may not *ipso facto* be deemed to justify an injunctive interference with the exercise of a constitutional privilege. In *American Federation of Labor v. Swing*, *supra*, the decree of the Illinois Court recited:

"That this Court and the Supreme Court of this State have held in this case that, under the law of this State, peaceful picketing or peaceful persuasion *are unlawful* when conducted by strangers to the employer (i. e., where there is not a proximate relation of employees and employer), and that appellants are entitled in this case to relief by injunction against the threat of such peaceful picketing or persuasion by appellees" (312 U. S. 321, 324). (Italics ours.)

The Illinois Court thus outlawed the communication of opinion in support of a purpose which it disapproved. This result was rationalized, as in the case at bar, simply by the use of a characterization. In the case at bar, the New York Court of Appeals wrote no opinion, but in its later opinion in the case of *Opera On Tour v. Weber*, 285 N. Y. 348, 357, stated:

"We have held that the attempt of a union to coerce the owner of a small business, who was running the same without an employee, to make employment for an employee, was an unlawful objective and that this did not involve a labor dispute (*Thompson v. Bookhout*, 273 N. Y. 390): So, too, in a case just unanimously decided, we held that it was an unlawful labor objective to attempt to coerce a peddler employing no employees in his business and making approximately thirty-two dollars a week, to hire an employee at nine dollars a day for one day a week (*Wohl v. Bakery and Pastry Drivers*, 284 N. Y. 220)."

This characterization by the New York Court of the purpose of the defendants as "an unlawful labor objective" has, of course, no greater sanctity than the declaration by the Illinois Court that the conduct there considered was "unlawful". In neither case is there to be perceived an

intrinsic evil in the conduct condemned by the State Court. If the Illinois Court was without the power to interfere with free speech in order to prevent the picketing of employers by "strangers", then the New York Court was likewise without the power to interfere in order to prevent peaceful picketing for the purpose of persuading a non-employer to hire an employee. The conduct prohibited by the New York Court exhibits no more attributes of evil, is no more subject to characterization as *malum in se*, than the conduct prohibited in Illinois. In each case the interference with peaceful picketing was violative of the constitutional guarantee for the reason that the conduct prohibited was essentially and exclusively an exercise of the privilege of free communication of ideas, and involved no deceitful or malicious use of language to accomplish a crime. The State Courts therefore themselves usurped unlawful power in applying the epithet "unlawful" to the activities in question.

To assert that the application of the epithet "unlawful" by an agency of the State to conduct otherwise privileged bestows upon the determination of that agency immunity from review upon Federal grounds is to beg the question at issue. Even in the case of legislative acts, State or Federal, pronouncements concerning the alleged evils of the prohibited conduct are not controlling. In *United States v. Carolene Products Co.*, 304 U. S. 144, 152, this Court stated:

"We may assume for present purposes that no pronouncement of a legislature can forestall attacks upon the Constitutionality of the prohibition which it enacts by applying opprobrious epithets to the prohibited act, and that a statute would deny due process which precluded the discovery in judicial proceedings of all facts which would show or tend to show that a statute depriving the suitor of life, liberty or property had a rational basis."

In *Schneider v. State*, 308 U. S. 147, 161, this Court stated:

"This court has characterized the freedom of speech and that of the press as fundamental personal rights and liberties. The phrase is not an empty one and was not lightly used. It reflects the belief of the framers of the Constitution that exercise of the rights lies at the foundation of free government by free men. It stresses, as do many opinions of this court, the importance of preventing the restriction of enjoyment of these liberties.

In every case, therefore, where legislative abridgment of the rights is asserted, the courts should be astute to examine the effect of the challenged legislation. Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions. And so, as cases arise, the delicate and difficult task falls upon the courts to weigh the circumstances and to appraise the substantiality of the reasons advanced in support of the regulation of the free enjoyment of the rights."

In *Thornhill v. Alabama*, 310 U. S. 88, and in *Carlson v. California*, 310 U. S. 106, legislative declarations that peaceful picketing constituted a public evil were properly disregarded by this Court because the prohibited conduct was but an exercise of the privilege of free discussion, and the legislative declarations of the alleged evil thereof were merely conclusions, lacking factual support.

The proper test to be applied to determine the validity of a conclusion of social evil, made by an agency of the State for the purpose of supporting an interference with the exercise of the privilege of free discussion, was stated in the following language by this Court in *Thornhill v. Alabama*, *supra*, at pages 104-105:

"Every expression of opinion on matters that are important has the potentiality of inducing action in the interests of one rather than another group in

society. But the group in power at any moment may not impose penal sanctions on peaceful and truthful discussion of matters of public interest merely on a showing that others may thereby be persuaded to take action inconsistent with its interests. Abridgement of the liberty of such discussion can be justified only where the clear danger of substantive evils arises under circumstances affording no opportunity to test the merits of ideas by competition for acceptance in the market of public opinion."

Finding no factual proof of any such "*clear danger of substantive evils*", this Court rejected the empty conclusions of the State courts in *Thornhill v. Alabama*, supra, and in *Carlson v. California*, supra.

The pronouncement of "illegality" made by the New York Court of Appeals having no controlling weight, we may now briefly analyze the prohibited conduct in the case at bar for the purpose of ascertaining whether *as a matter of fact* there was any basis for placing it in the category of the unlawful.

C. No factual basis for prohibiting the exercise of the privilege of free discussion exists in the case at bar.

As we have already pointed out under Point A, supra, the conduct of the defendants here in question did not involve the commission of any recognized tort nor the violation of any statute of the State of New York. Per contra, the conduct was in direct accord with the policy of the State as expressed by legislative enactment in Section 876-a of the Civil Practice Act.

In what respects then may the facts be said to support a judicial declaration of illegality?

This Court has firmly adopted the rule first stated by Mr. Justice Holmes in *Schenck v. United States*, 249 U. S. 247, and later expressed in greater detail in the concurring opinion of Mr. Justice Brandeis, in which Mr. Justice Holmes joined, in *Whitney v. California*, 274 U. S. 357, that

no restriction of the exercise of free speech is justified under the Constitution, unless the following three factors are established:

- 1) Proof of the existence of a clear danger to the public welfare,
- 2) Proof that the danger is imminent,
- 3) Proof that the danger is sufficiently substantial to justify the restriction in question.

In *Whitney v. California*, 274 U. S. 357, 376, Mr. Justice Brandeis stated the rule as follows:

"To justify suppression of free speech, there must be reasonable ground to fear that serious evil will result if free speech is practiced. There must be reasonable ground to believe that the danger apprehended is imminent. There must be reasonable ground to believe that the evil to be prevented is a serious one."

Similar expression has been given to the rule in the opinions of this Court in *Herndon v. Lowry*, 301 U. S. 242, *Thornhill v. Alabama*, 310 U. S. 88, and *Carlson v. California*, 310 U. S. 106.

The rule is a rule of practical reality. It calls for facts rather than conclusions. We test the applicability of the rule to the case at bar, therefore, by considering whether any *factual basis* for the restriction of the privilege by the State Court exists.

For convenience of analysis the defendant's conduct may be considered from two aspects: (1) the purpose sought to be accomplished, and (2) the means adopted to accomplish the purpose.

- 1) The purpose sought to be accomplished was not contrary to public welfare.**

In the statement of facts hereinabove set forth, we have fully described the peddler system and the menace thereof to the established standards of the defendant union,

and we shall not burden the Court with reiteration of those facts here. It will here suffice merely to recall that it was the legitimate self-interest of the union which prompted the union to act as it did, and that the record is completely free of any suggestion of malice.

The specific aim of the union was simply this: *To obtain employment for its members by peddlers for one day out of seven.*

Certainly, it is now too late to contend that to seek employment for members of a union is an illegal activity. The basic spirit of all contemporaneous labor legislation, both State and Federal, is to insure that the effort to obtain and maintain such employment shall be unobstructed by undue bargaining advantages through the utilization of tactics commonly termed "unfair labor practices". That industrial strife will be minimized and the National welfare best served by sanctioning such activity is now a recognized economic truth.

National Labor Relations Act, 29 U. S. C., Sections 151-166.

New York State Labor Relations Act, New York Labor Law, Sections 700-716.

The only additional factor in the case at bar which remains to be considered is the fact that the proposed employers happen to be peddlers, who engage no assistants. The question to be answered thus resolves itself to this: *Is there then any factual basis for holding that utterly different principles ought to be applied to such peddlers?*

No sound reason appears for holding that the decision of a business entrepreneur to conduct his business without any employees whatever ought to be placed in a category more sacrosanct than that in which the decision of other entrepreneurs to conduct their businesses with employees, *but without union employees*, is placed.

In each instance, the desire of the proprietor is contrary to the desire of the labor union. In each instance,

the maintenance of democratic industrial relations requires, however, that the desires and opinions of the proprietor and of the union be accorded equal respect. In each instance, therefore, unless the Courts are to assume power to supervise labor organizations, it is the function of the Courts, not to favor either of the disputants, but simply to enforce fair rules of conflict between them. Protection of the exercise of the privilege of free speech by means of peaceful picketing, or otherwise, involves no determination of the merits of the dispute in question; the disputants are merely guaranteed the right to appeal to the public for support, and public opinion, rather than judicial determination, is the final arbiter.

If it be argued that peddlers are a class of proprietors entitled to special protection, then it must be answered that no factual study has ever been made, so far as we know, which establishes or tends to establish the merits of such a contention. Nor has there been legislative investigation or determination of this factual question by the State of New York. Nor is there proof of any sort in the record herein which supports such a conclusion. On the other hand, not only has the union's purpose to secure employment by peaceful picketing been expressly declared to be in accord with the policy of the State of New York, by legislative enactment based upon factual study (New York State Labor Relations Act, New York Labor Law, Sections 700-716; New York Civil Practice Act, Section 876-a), but the record herein is replete with proof of the social and economic evils of the peddler system (R. 50-54).

It is thus apparent that there is no factual basis whatever for the statement by the New York Court of Appeals that " * * * it was an unlawful labor objective to attempt to coerce a peddler * * * ", this statement, being but an empty conclusion having no factual content.

The vigorous dissenting opinion of the minority of that Court, written by Chief Judge Lehman in the *Opera* case, plainly recognized the lack of factual support for such

determinations by the Court, and the unconstitutionality of the Court's intrusion into this area of economic conflict. Judge Lehman's opinion characterized the decision of the Court in that case as:

"* * * an intrusion by the Court into a field from which it is excluded under the laws of the State as formulated in an unbroken line of judicial decisions, by statute of the legislature and by the Constitution. * * *" (285 N. Y. 348, 366-367).

While recognizing that, under proper circumstances, the Legislature might, based upon an examination of the facts, make appropriate regulations restricting labor activities, the minority opinion clearly pointed out that the Courts, without such factual basis, lacked the power to impose such restrictions upon personal liberties:

"The Legislature exercising its power, within the framework of the Constitution, to promote the public welfare may restrict or enlarge the field within which such combinations may lawfully act, the purposes which they may lawfully promote, and even the means which they may lawfully use; and its actions there may properly be dictated by its considered opinion of the economic, social or political consequences and the effect upon the public welfare of combinations to achieve particular ends. Because the Legislature has such power and its action may properly be dictated by such considerations, a discriminating electorate will be guided in its choice of members of the Legislature by the economic, social and political opinions of the candidates.

The courts have no such power. A unanimous court approved and based their decision in *Interborough Rapid Transit Co. v. Lavin*, 247 N. Y. 65, 74, 159 N. E. 863, 866, 63 A. L. R. 188, on the statement in the opinion in that case that "Demands of workmen may sometimes be fair and sometimes unfair. *Combinations give the workmen a power of compulsion which may work harm to their employer, the public, and even to themselves.* Where the workmen do not combine they may be compelled by force of economic

circumstances to accept unfair terms of employment. Such conflicting *considerations of economic policy are not primarily the concern of the courts.* (Italics are new.)" (285 N. Y. 348, 368).

In the case at bar, the end result sought to be achieved by the defendants, namely, employment of members of the union by the plaintiffs, was clearly lawful. There is no prohibition in New York State, or in any other State of the United States, either at common law, or by statute, which forbids such employment. The decision of the Court of Appeals in the case at bar is thus found to rest upon the strange proposition that an unsuccessful attempt to achieve a lawful result is unlawful. It is immediately apparent that such a proposition cannot be sustained, unless it is postulated as follows: An attempt, *by unlawful means*, to achieve a lawful result, is unlawful. We shall now, therefore, consider the means utilized by the defendants. If, as we believe can be promptly demonstrated, the means utilized were not contrary to public welfare, the conclusion is inevitable that determination of illegality made by the Court of Appeals of the State of New York is utterly arbitrary and unwarranted.

2) The means adopted to accomplish the purpose were not contrary to public welfare.

The New York Court of Appeals in its later opinion in the *Opera* case characterized the conduct of the defendants in the case at bar as an "attempt to coerce", but as we have already demonstrated, under Point A(5), *supra*, the term "coerce" could not have been legitimately used in any factual sense, for admittedly the persuasive efforts of the defendants were entirely peaceful. Thus is definitely appears that the determination of the Court of Appeals as to the legality of the means, as well as the legality of the object here involved, was a conclusion devoid of factual content.

The complete propriety of the conduct of the defendants is shown by the following analysis of the defendants activities and comparison thereof with the activities which this Court has approved in other cases. The activities of the defendants herein consisted solely of the following courses of conduct:

- 1) Carrying of placards in public places reading as follows:

"HYMAN WOHL

A BAKERY ROUTE DRIVER WORKS SEVEN DAYS
A WEEK WE ASK EMPLOYMENT FOR A UNION
RELIEF MAN FOR ONE DAY. HELP US SPREAD
EMPLOYMENT AND MAINTAIN A UNION WAGE
HOUR AND CONDITION.

BAKERY & PASTRY DRIVERS & HELPERS
LOCAL 802 I. B. OF T. affiliated with
A. F. of L." (R. 57).

- 2) Requesting about five retail dealers in bakery products, who were customers of the plaintiffs, not to deal with the plaintiffs unless the plaintiffs would conform to the established union standards (R. 58, 59):

- 3) Requesting Diamond Baking Co., Inc., and Bernstein & Dickerman, the two wholesale bakers who distributed their products through the plaintiff peddlers, not to continue such method of distribution unless the plaintiffs would conform to union standards (R. 48, 49).

The legal propriety of each of these courses of conduct is clear.

- 1) The carrying of the placards was conduct immune from statutory or judicial restraint under the decisions of this Court in *Thornhill v. Alabama*, *Carlson v. California* and *American Federation of Labor v. Swing*.

2) The request made to the retail dealers in bakery products was similar to the activity of the union involved in the cases of *Milk Wagon Drivers v. Lake Valley Farm Products, Inc.*, 311 U. S. 91, and *Milk Wagon Drivers v. Meadowmoor Dairies, Inc.*, 312 U. S. 287, except that in the case at bar no violence or threat thereof was involved. The findings of fact of the Trial Court show that no suggestion of pressure other than a lawful appeal to the public was ever made by the defendants. The defendants merely informed the retail dealers of the Union's policy in regard to the peddler system and stated that a picket with a placard in the form above quoted would be placed in the neighborhood if the union's request was denied:

"That on the 25th day of January, 1939, a member of the defendant union followed plaintiff Platzman as he was distributing his products, and went into two or three places of business of said plaintiff's customers and advised one of said customers that the union was seeking to persuade the plaintiff to work but six days per week and employ a union driver as a relief man, and further stated to the said one customer that in the event he continued to purchase from plaintiff Platzman, that on the following day a picket would be placed in the vicinity of said store with a placard reading as heretofore set forth" (R. 58, 59).

Since the placard was unobjectionable, and the parading thereof was a lawful act, the threat to carry the placard in public places was necessarily lawful, for that which may lawfully be done may lawfully be threatened.

3) What has been said with regard to item 2 applies with equal force to item 3. The requests made to the wholesale bakers, *Diamond Baking Co., Inc.*, and *Bernstein & Dickerman*, were the same as those made to the retail dealers. It was not suggested in any instance that in the event of refusal any act would occur other than lawful picketing with the placards above described (R. 48, 49).

In summary, it may be stated that the means utilized by the defendants to achieve the result aforesaid, consisted solely of peaceful picketing and the utterance of oral statements to the effect that peaceful picketing would be undertaken if support for the defendants' program could not be achieved without such picketing. No danger to the public welfare can be found in such peaceful activities. The means adopted to achieve the union's purpose were as lawful as the hoped for results. The conclusion of illegality, upon which the decision of the Court of Appeals of New York in the case at bar rests, is utterly without factual support, both as to the purpose sought to be achieved, and as to the means adopted to achieve the purpose, and that conclusion must be cast aside by this Court.

D. The judgment of the State Court inaugurates judicial censorship of speech in labor controversies.

Analysis of the rationale of the New York Court of Appeals, enunciated by the majority of that Court in the *Opera* case, definitely shows that the determinations of "unlawful labor objectives" made in that case and in the case at bar are based upon no uniformly applicable set of economic or legal principles. It is impossible to extract from such determinations any valid rule of general application respecting the "lawfulness" of "labor objectives". Instead, it becomes clear, as the decisions are analyzed, that in each case the Court assumed the power to render an *ad hoc* determination, upon the merits of the particular social-economic problem presented, and accordingly to restrict freedom of speech.

In the case at bar, according to its later explanation, the Court of Appeals found that a peaceful effort to obtain employment from a peddler engaging no employees was unlawful.

In *Thompson v. Boekhout*, 273 N. Y. 393, cited in the *Opera* case as a precedent, the Court of Appeals found

that an attempt to obtain employment from an ex-employer who had decided to dispense with employees was unlawful.*

In the *Opera* case, the Court of Appeals found that a peaceful effort to obtain employment from an employer who preferred to use mechanical means for the production of music was unlawful.

No fundamental legal principle governing these various determinations can be postulated. The decisions do not even purport to be based upon any factual analysis of social and economic needs. Nor do these determinations furnish any guide to future judicial policy. They merely warn that henceforth labor organizations are not free to formulate objectives until judicial approval has been obtained. By virtue of these decisions, the "legality" of a "labor objective" is to be determined *de novo* in each case which comes before the court. Persons interested in labor disputes will have the privilege of communicating their opinions to others only if the State court approves the object sought to be attained, and whether or not that object meets judicial approval will be known only when the court has ruled.

That the adoption of such a doctrine constitutes absolute and unconfined judicial censorship of speech cannot intelligently be doubted.

Thus far the Court of Appeals has placed in the category of the unlawful, under its newly assumed power to rule upon the legality of labor objectives, only the three types of activity above listed. There is not, however, to be perceived any limiting factor in the Court's policy, and the list of the unlawful may be expected to grow as new controversies are litigated. Under the policy aforesaid, the Court's supervision of "objectives" is not necessarily limited to the field of labor controversies. The same logic, or illogic, would permit the determination by the Court of the legality of all objectives sought to be attained by the

* This only if we accept the post-litem explanation, for on its face all the opinion held was that Section 876-a of the New York Civil Practice Act was inapplicable.

free communication of ideas. Thus it may reasonably be expected to follow, if the decision in the case at bar is held constitutionally sound, that State courts will assume the power to declare generally in what causes banners may be carried, pamphlets distributed, and oral statements voiced, and in what causes silence must be maintained. This forecast may not be dismissed as *reductio ad absurdum*; this is precisely what the Court has already done in the field of labor controversies, and before this doctrine has become rooted, there is urgent need to inquire by what authority the field of labor controversy, more or less than any other field of human activity, merits subjection to judicial censorship. The State judiciary has assumed to exercise a power in the case at bar which thus far neither legislative nor even administrative agencies of the State have ever ventured to exercise. The continued exercise of such power is fraught with a danger most grave and most immediate.

E. CONCLUSION

The judgment of the Court of Appeals of the State of New York should be reversed.

Respectfully submitted,

EDWARD C. MAGUIRE,
Attorney for Petitioners.

Of Counsel:

EDWARD C. MAGUIRE
SAMUEL J. COHEN

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IN THE

Supreme Court of the United States

OCTOBER TERM 1940

No. 901

BAKERY AND PASTRY DRIVERS AND HELPERS LOCAL 802 OF
THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, PETER
SULLIVAN, individually and as President of the said Union,
PADDY SULLIVAN, individually and as an officer of the said
Union, and HYMAN BERNSTEIN, individually and as business
agent of said Union, all of 265 West 14th Street, New
York City,

Petitioners,

against

HYMAN WOHL and LOUIS PLATZMAN,

Respondents.

REPLY BRIEF FOR PETITIONERS

EDWARD C. MAGUIRE,
Attorney for Petitioners.

Of Counsel:
EDWARD C. MAGUIRE,
SAMUEL J. COHEN.

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HYMAN WOHL and LOUIS PLATZMAN,

Respondents.

REPLY BRIEF FOR PETITIONERS

POINT I

The Respondents' brief misstates the facts.

It is with deep regret that we are obliged to state that in our considered opinion the Respondents' brief represents a brazen and deliberate attempt to mislead the Court by falsifying the material facts in the case at Bar. The unblushing audacity and complete recklessness with which the authors of the Respondents' brief have misstated the

facts is utterly astounding. It is indeed unfortunate that the Respondents have seen fit to approach the issues in this manner and we are glad to be able to state that this is the first instance in the course of our experience before the Bar that such an abuse of the brief writer's privileges has been met.

We are confident that the Court will not be misled by the misstatements contained in the Respondents' brief, but we feel obliged briefly to point out the major falsehoods before resuming the main thread of our argument.

Among the most glaring misstatements found in the Respondents' brief are the following: •

- a. The statements at page 6 of the Respondents' brief:

"Petitioners did not show that they had ever appealed to the public, retail stores or bakers protesting against the alleged evils of the peddler system."

"The Trial Court saw through this sham, in its decision, when it found that the intent and primary purpose of the Union was to compel the respondents to hire unnecessary help."

"The attempt of the Union to change its position after litigation was commenced by relying upon the 'peddler system' in an effort to justify and escape the consequences of its conduct, did not deter the Trial Court in determining the true intent of the combination."

- b. The statement at page 23 of the Respondents' brief:

"It was only after litigation commenced that the Union first raised the peddler system in an attempt to justify its legal conduct. However, the uncontradicted testimony, as well as the findings of the Trial Court, as affirmed by the Appellate Courts, showed that the Union really relied upon the peddler system as a pretext, and that it was not advanced in good faith."

c. The statement at pages 38 and 39 of the Respondents' brief:

"The petitioners' brief admits that no general course of picketing or publicity against the peddler system was resorted to in this case similar to that of the Meadowmoor and Lake Valley cases. Whereas, in those cases the specific object of the Unions was to expose, eradicate and destroy the peddler system by a trade wide campaign of picketing against numerous manufacturers and retailers, the specific object of the petitioners herein was an attempt to foist unnecessary employees upon the respondents."

d. The statement at page 39 of the Respondents' brief:

"The petitioners' brief states on page 4 that the respondents conceded that there was no fraud practiced by the Union and rely therefor upon the respondents' concession that there was no misrepresentation. No concession, regarding fraud was ever made. Although the placard used by the Union truthfully stated a fact, it referred to the respondents as 'a bakery route driver', which together with oral statements that non-union drivers were delivering merchandise to retail stores could reasonably give a person the impression that the respondents were not owners but merely non-union employees. This might be considered a species of fraud."

The complete refutation of the foregoing misstatements of the facts is found in the decision of the Trial Court (R. 46-60). The Respondents evidently feel at liberty to disregard the findings of the Trial Court despite the fact that they themselves have never questioned these findings and although such findings are conclusive upon appellate tribunals.

The attorney for the Respondents explicitly conceded upon the trial that no misstatements had been made by the Petitioners (R. 148), and the Trial Court so found (Finding No. 54, R. 55).

The decision of the Trial Court definitely establishes that the activities of the Union were directed against the

evils of the peddler system, and that reference to that system was neither a sham nor an afterthought. In refutation of the above quoted statements in the Respondents' brief, we merely quote the following Findings contained in the decision of the Trial Court:

(Concerning the Status of the Plaintiffs.)

"4. That the plaintiffs are peddlers engaged in the business of buying baked food products from different manufacturing bakers and reselling them to grocery stores" (R. 47).

(Concerning the Standards Achieved by the Union.)

"26. That these conditions of the approximate 2700 organized drivers have been attained only after many years of effort involving organization of the men, that is, lawfully persuading them to become members of the union, collective bargaining with employers which resulted in agreements, and at times strikes which resulted in agreements, all such agreements prescribing the wages, hours and conditions of bakery drivers" (R. 50).

(Concerning the Origin and Growth of the Peddler System.)

"27. That approximately five years ago in New York City there were comparatively few 'peddlers' or so-called independent jobbers; that at most they numbered 50 and were largely men who had a long established retail trade" (R. 50).

"28. That the Social Security and Unemployment laws were put into effect approximately four years ago" (R. 51).

"29. That thereafter the number of 'peddlers' engaged in distributing bakery products increased substantially from year to year, until at this time there are in the City of New York more than 500 'peddlers' or independent jobbers" (R. 51).

(Concerning the Direct Injury Suffered By Members of the Union On Account of the Peddler System.)

"30. That in the past eighteen months several baking companies which theretofore operated bakery routes through using employed drivers on routes owned by the companies, at the expiration of their contracts with the union, which contracts prescribed minimum wages, hours, working conditions, etc., and a six-day week, notified the union that they would no longer employ such drivers, that they would no longer become parties to the agreements with the union of the nature aforementioned, and, after discharging the employee drivers, such companies proposed to such employee drivers that they purchase trucks for nominal amounts, in some instances \$50.00, and thereupon, as 'peddlers' and jobbers purchasing the baked products from the companies, should undertake to serve such routes" (R. 51).

"31. That there were at least 150 drivers in such period mentioned in the previous paragraph who were members of the union and working under union conditions and contracts who, within the past eighteen months, were discharged and required to sever their connections with the companies for which they theretofore had worked, unless they agreed to and undertook to act as 'peddlers' or distributors, and that in approximately 50 of such instances the men did become 'peddlers' and thereupon abandoned their membership in the union" (R. 51).

"32. That 'peddlers' or independent jobbers are not covered by Workmen's Compensation Insurance, Social Security or Unemployment Insurance, and that an employer who changes his method of distribution from using employee drivers to 'peddlers' or independent jobbers saves considerable by way of premiums and taxes" (R. 52).

"33. That if those who are presently employers and parties to contracts with the unions upon the expiration of those contracts, to survive, are required to adopt the 'peddler' system of distribution, then the wages, hours, working conditions, six-day week, etc., attained by the union after long years of struggle will be destroyed and lost" (R. 52).

(Concerning the General Program of the Union With Reference to the Peddler System.)

"34. That the union, in good faith, knowing of the increase in the use of 'peddlers' for the distribution of baked products, in the Spring of 1938 made an effort to persuade the 'peddlers' to become members of the union" (R. 52).

"35. That those 'peddlers' who desired to become members of the union were admitted to membership and were only required to conform to and abide by the same Constitution and By-Laws, rules and regulations as were all other members and that included therein was a requirement that no union members should work more than six days per week" (R. 52).

"36. That the plaintiffs herein were asked to join the union, each of them signed an application to so do, but neither of them appeared at meetings that were thereafter called for those who had made applications, nor did they in any further respect act towards the establishment for them of membership in the union" (R. 52).

"37. That those 'peddlers' who did apply for membership and who took the necessary steps to acquire membership, were accepted into full membership in the union and the only requirements imposed upon them were that they conform to the Constitution and By-Laws and comply with the rules and regulations of the union which generally applied to all members" (R. 53).

"38. That the union thereupon determined that a reasonable restriction and regulation of the 'peddlers' was to seek an understanding with him, whether he was a member of the union or not, that he work for six days a week and that he employ for one day in a week an unemployed union member" (R. 53).

The above findings definitely establish that the activities of the Union were directed against the evils of the peddler system and that no petty, malicious plot against the particular plaintiffs herein involved was before the Court.

7

There is, of course, not a single word to be found in the decision of the Trial Court or elsewhere in the record to the effect that any "sham" on the part of the Petitioners herein ever occurred.

Findings 34 to 38, inclusive, above quoted, expose with crystal clarity the deliberate falsehood which has been made the basis of the Respondents' brief. The Trial Court definitely found that the Union in *good faith* entered upon a program to persuade peddlers to become members of the Union, and further, in the event the peddlers refused to become members of the Union, to persuade them to limit their days of labor to six days per week and to allow a member of the Union to perform the necessary work on the seventh day. In the face of these findings, which the Respondents have never previously questioned, which they cannot now question, and which were uncontroverted upon the trial, it is, indeed, shocking to be confronted with a statement, such as we find at page 23 of the Respondents' brief, declaring that:

"However, the contradicted testimony, as well as the findings of the Trial Court, as affirmed by the Appellate Courts, showed that the Union really relied upon the peddler system as a pretext and that it was not advanced in good faith."

Throughout the Respondents' brief great liberties have been taken with the facts. An attempt to correct each misstatement would unduly extend this brief. We trust that we have given the Court sufficient warning of the unreliability of the alleged factual statements contained in the Respondents' brief, and that in no instance will our silence be deemed assent to the grossly distorted version of the facts presented by the Respondents.

POINT II

The activities of the petitioners were not contrary to any policy of the State of New York.

Whereas the record in the case at bar establishes without contradiction the direct economic injury sustained by members of the petitioners' Union as a result of the development and extension of the peddler distribution system, the record is utterly devoid of proof that the peaceful activities of the defendant Union have in any respect endangered the public welfare.

Notwithstanding the complete absence of such proof from the record, the Respondents have not hesitated to allege in their brief that helpless proprietors of small businesses have been systematically intimidated by various unions (inferentially including the petitioners herein) for the sole purpose of foisting unnecessary help upon them, and such conduct has been characterized as "nothing more than extortion" (p. 11).

Upon this reckless and unfounded charge the Respondents have with equal recklessness sought to base a wholly imaginary public policy of the State of New York to the effect that:

"No Union may picket any of its small businessmen for the purpose of compelling them to hire unnecessary help, where such proprietors operate their business alone without any employees" (p. 10).

Neither the Legislature nor the Courts of the State of New York have ever recognized any such public policy. On the contrary, the Court of Appeals of the State of New York definitely holds that picketing may lawfully be conducted despite an employer's insistence upon conducting his business without any help.

As pointed out in our main brief, the public policy of the State, when it involves an infringement upon the con-

stitutional privilege of freedom of speech, is not controlling upon this Court, whether that policy be declared by the legislative or judicial organ of the State.

Thornhill v. Alabama, 310 U. S. 88.

American Federation of Labor v. Swing, 312 U. S. 321.

Nevertheless, we consider it appropriate, in order to prevent the perpetration of a fraud upon this Court, to demonstrate that the public policy alleged by the Respondents does not and never has in fact existed.

With respect to a legislative declaration of such public policy in New York little need be said. The Respondents have not pointed out and cannot point out any legislative declaration. Such legislative expressions of policy as do exist support the aims sought to be achieved by the petitioners:

New York State Labor Law, Sections 161, 169, 169-a, 700-716.

New York Civil Practice Act, Section 876-a.

New York State Constitution, Article I, Subdivisions 8 and 17.

New York State Penal Law, Section 2143.

Among the statutory provisions above cited it may be noted that there are provisions requiring one day of rest in seven for various types of employees (Labor Law, Sections 161, 169, 169-a), and a provision prohibiting all labor on Sunday, except works of necessity and charity (Penal Law, Section 2143).

With respect to judicial declarations of policy, the comparatively recent opinion of the Court of Appeals in the case of *Baillis v. Fuchs*, 283 N. Y. 133 (1940), is illuminating.

In the *Baillis* case, in order to avoid labor disputes, four brothers, who were co-partners, decided to operate their business without any employees whatever, and they

thereupon performed all the work themselves. Despite this determination by the proprietors of this business, the members of a union, some of whom had previously been employed by these proprietors, caused their place of business to be picketed for the purpose of gaining employment. Upon these facts the Court of Appeals found that a labor dispute within the meaning of the New York statute existed, and that the proprietors of the business *were not entitled to an injunction prohibiting the aforesaid picketing.* This result was reached in the face of a declaration by the plaintiffs that "they do not intend to hire any new employees" (283 N. Y. 133, 136).

Thus it is clear that the small proprietor's "necessity" or desire for employees is not the factor upon which the New York Court of Appeals, expressing the common law doctrines of the State of New York, pivots its decisions with reference to the legality of picketing.

On the contrary, the opinion in the *Baillis* case explicitly declares that the Court of Appeals relies wholly upon the factor of "employment" as the test. The "first essential" for a "labor dispute" is unequivocally declared to be "employment" (283 N. Y. 133, 137). Using "employment" as the key to its rationale, the opinion of the Court of Appeals in the *Baillis* case proceeds to construct a tortuous path wherewith to connect its various decisions starting with *Thompson v. Boekhout*, 273 N. Y. 390 (1937) and concluding with *Baillis v. Fuchs*. "Necessity" or lack of "necessity" of help does not enter into the Court's discussion at any point in the *Baillis* case or in any other opinion of that Court with which we are familiar. We have already quoted and discussed the language of the Court of Appeals in the case of *Operation Tour v. Weber*, 285 N. Y. 384 (1941), in our main brief (pp. 17, 28-30), and shall refrain from repetition here. Suffice it to note here that the reference to the case *Dat-bar* which is found in the opinion in that case contains

no allusion whatever to "unnecessary labor" (285 N. Y. 348, 357).*

In view of the foregoing, it is obvious that there can be no sound distinction drawn between the case of *American Federation of Labor v. Swing*, supra, and the case at bar. In each case the arbitrary rule enunciated by the State Court, as a justification for its injunctive interference with picketing, was, essentially, that picketing was not permissible in the absence of the conventional employment relationship. In neither case was there any factual study, or other proof in the record, which established the existence of a recognized danger against which the injunction might properly issue. In both cases, therefore, the encroachment upon the constitutional privilege was without justification.

POINT III

The injunction of the State Court gains no validity by limiting its prohibition to picketing.

It is argued by the Respondents that because the injunction in question is directed solely against picketing and does not interfere with other forms of publicity, it, therefore, may be deemed a "narrowly drawn" injunction and does not violate the constitutional guarantees. It is further argued that the Petitioners have erred in describing such an injunction as "absolute" in character.

These arguments completely overlook the fact that picketing was the sole type of activity in which the Petitioners

* In the case at bar the record established that the Respondent Wohl had previously engaged an employee as a relief driver. See Findings Nos. 43, 47 (R. 54). Also it established that both Respondents had previously signed applications for membership in the Union. See Finding No. 36 (R. 52-53). There was therefore "employment" by at least one of the Petitioners, and the Petitioners and Respondents were interrelated through the Union organization. This situation, obviously, is fundamentally different from that presented in cases where a small merchant is picketed solely for malicious purposes.

engaged in the labor dispute in question in the case at bar. Accordingly, by enjoining such picketing the State Court completely stifled the Petitioners' activities. The injunction does not limit its scope to acts of violence, fraud, disorder, or any other acts of a character recognized as tortious. It is, therefore, ridiculous to argue that the injunction limits its effect to the prevention of specific wrongs. Beyond question, what it does do is prohibit absolutely the activity known as picketing, which this Court has definitely recognized as a valid mode of free speech.

It is, of course, not for the Respondents to dictate in what manner the members of the Union shall proceed with their peaceful and orderly program to eradicate the economic evils of the peddler system. It is not always possible to organize an entire industry simultaneously. There are occasions when, under the particular circumstances involved, common sense suggests publicity by means of picketing. There are other occasions when appeals to the public by distribution of literature, by the publication of newspaper advertisements, or by radio broadcasting, may be more desirable. On still other occasions, the calling of strikes may be the chosen line of conduct. The Union may, in the exercise of its constitutional rights, resort to each or all of these courses of conduct, so long as it does so in a peaceful and orderly manner.

It is not for the State Courts nor for the Respondents to determine which modes of free speech are to be exercised and which modes are to be placed under a ban. No sound reason exists for singling out peaceful picketing from other activities.

It would appear that the Respondents definitely concede that, except for picketing, the members of the defendant Union are within the protection of the constitutional guarantees, for it is declared at page 8 of the Respondents' brief:

"The only prohibition as far as the respondents' customers and bakeries are concerned is against picket-

ing. All other means are still at the disposal of the petitioners. The decree in no way affects the rights of the petitioners to expose the so-called evils of the peddler system and to bring such evils to the attention of the public and all those in the trade directly interested. The decree does not prohibit the Union from picketing all other bakeries and retail stores in the industry in their legitimate endeavors to prevent the spread and growth of the peddler system." (Italics ours.)

It is interesting to note that the Respondents apparently concede even that picketing may be lawful so long as it is directed against others.

Again, at page 9, the Respondents' brief declares:

"The petitioners are at liberty, at any time, to take all customary steps, as other Unions have done, to attempt to destroy and liquidate the peddler system. They cannot, however, picket respondents' few manufacturers and small number of customers to compel the plaintiffs to hire unnecessary help and to abstain from performing all their work in their own business."

The distinction sought to be drawn between picketing and other forms of speech is utterly arbitrary and unwarranted. The Respondents have failed to show any grounds whatever for prohibiting the members of a labor union from giving publicity to their opinions by picketing, while permitting them to broadcast their opinions by the distribution of literature or by other means.

The Respondents here apparently rest their arguments largely upon the decision of this Court in the case of *Milk Wagon Drivers v. Meadowmoor Dairies*, 312 U. S. 287, wherein an injunction prohibiting picketing was upheld. In the *Milk Wagon* case, however, the injunction of the State Court was justified because of the extreme violence which permeated the defendant's activities, a situation

radically different from that of the case at bar where, admittedly, none but peaceful means have been employed by the Union.

Throughout their brief the Respondents have sought to create an impression that the activities of the petitioners herein were motivated by malice. We have pointed out the total lack of substance for this version of the facts. The injunction of the State Court cannot now be saved by presenting this Court with a deliberately distorted picture of the controversy.

In the case at bar the State Court ventured to interfere with the defendants' exercise of free speech solely because the State Court's notion of desirable labor policy conflicted with that of the Union. The State Court having found, however, that the Union acted in good faith (Finding No. 34, R. 52), the Court was powerless under our Federal Constitution to impose its opinions upon the petitioners.

CONCLUSION

The judgment of the Court of Appeals of the State of New York should be reversed.

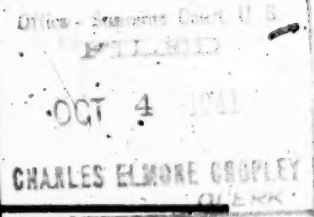
Respectfully submitted,

EDWARD C. MAGUIRE,
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Of Counsel:

EDWARD C. MAGUIRE,
SAMUEL J. COHEN.

FILE COPY
No. 901



IN THE

Supreme Court of the United States

OCTOBER TERM 1940

BAKERY AND PASTRY DRIVERS AND HELPERS LOCAL 802 OF
THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, PETER
SULLIVAN, individually and as President of the said
Union, PADDY SULLIVAN, individually and as an officer
of the said Union, and HYMAN BERNSTEIN, individually
and as business agent of said Union, all of 265 West
14th Street, New York City,

Petitioners,

against

HYMAN WOHL and LOUIS PLATZMAN,

Respondents.

BRIEF IN OPPOSITION TO RESPONDENTS' APPLICATION FOR REHEARING

EDWARD C. MAGUIRE,
Attorney for Petitioners.

Of Counsel:

EDWARD C. MAGUIRE,
SAMUEL J. COHEN.

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IN THE
Supreme Court of the United States

OCTOBER TERM 1940

BAKERY AND PAWTRY DRIVERS AND HELPERS LOCAL 802 OF
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and as business agent of said Union, all of 265 West
14th Street, New York City,

Petitioners,

against

HYMAN WOHL and LOUIS PLATZMAN,

Respondents.

**BRIEF IN OPPOSITION TO RESPONDENTS'
APPLICATION FOR REHEARING**

I. The Question Presented.

In the case at bar, this Court granted the petitioners' application for a writ of certiorari, and upon granting such writ unanimously reversed the judgment of the Court of Appeals of the State of New York (No. 901, October Term, 1940; decided June 2, 1941).

The judgment in question upheld the blanket injunction of the Trial Court, which absolutely enjoined the petitioners' labor union activities ~~constituting~~ solely of the admittedly peaceful, orderly and truthful publicizing of a labor dispute.

constituting

The acknowledged object of the activities aforesaid was to protect the Union against the impairment of its established scale of wages and standard of working conditions caused by the maintenance and extension of the peddler system.

The peddler system has been adequately described in the findings of fact of the Trial Court (R. 50-54), and has been discussed at length in the brief submitted by the petitioners upon their application for the writ of *certiorari* herein. Accordingly, we shall not burden the Court with reiteration of the facts here, but respectfully direct the Court's attention to the statement and discussion of the facts contained in the original petition and brief in support thereof.

In brief summary, however, it may be well to note here that, as found by the Trial Court, the peddler system is an arrangement whereby wholesale manufacturers of bakery products, instead of engaging regular employees to distribute their products, effect distribution through individuals known as peddlers who resell the products to retail dealers and consumers. Such peddlers are utterly unregulated and unorganized, are economically dependent upon the wholesalers and, in order to earn a bare subsistence, work seven days per week without respite (R. 56). Technically ostracized from the category of employees, despite their economic subservience, the peddlers are not covered by Workmen's Compensation, Social Security, or Unemployment Insurance statutes (R. 53). The menace to society at large and to the established standards of the bakery drivers' union, in particular, is obvious. Because of the increase in the number of peddlers in recent years and the corresponding discharge of regular union employees, the petitioners sought to organize the peddlers and to improve the working conditions of the industry by persuading the peddlers to work only six days per week and to engage union employees as relief drivers one day per week (R. 52-53). Both of the plaintiff peddlers, Hy-

man Wohl and Louis Platzman, had previously applied for membership in the defendant Union, and Platzman had become a member, but was delinquent in the payment of his dues (R. 52-53, 149-151). Such was admittedly the direct and substantial economic interest which motivated the Union's activities in the case at bar.

It is recklessly and incorrectly alleged in the respondents' petition for rehearing that the activities of the petitioners in question were not actually directed against the peddler system, but that reference to the evils of the peddler system was merely an afterthought. In answer to this unfounded charge, we need merely point to the findings of fact of the Trial Court which described the peddler system and the effect thereof upon the Union in great detail (R. 50-54). It may also be noted that the language of the placards displayed by the Union was as follows:

"HYMAN WOHL

A bakery route driver works seven days a week. We ask employment for a union relief man for one day. Help us spread employment & maintain a union wage hours and condition

**BAKERY & PASTRY DRIVERS & HELPERS
LOCAL 802 I. B. of T. affiliated with A. F. L."**

(R. 57).

The absolute injunction granted by the Trial Court and upheld by the New York Court of Appeals was reversed by this Court upon the authority of *American Federation of Labor v. Swing* (No. 56, October Term, 1940), wherein the Court plainly held that the Constitutional guarantee of freedom of discussion may not be infringed by the common-law policy of a state whereby peaceful persuasion through picketing is declared to be tainted with illegality in the absence of an immediate employment relationship between the disputants.

Rehearing is now requested by the respondents upon the sole ground that this Court may not interfere with the injunction of a state court which purports to be based upon a violation of the labor policy of that court, regardless of whether a question of freedom of speech under the Federal Constitution is involved. It is earnestly believed that the mere statement of this proposition is its own refutation, and accordingly we shall not deal with it at great length. In view of the importance of the subject at issue, however, we avail ourselves of the opportunity briefly to reply to the respondents' contentions.

II. No substantial ground for rehearing has been shown to exist; a state court may not circumvent the guarantees of the Federal Constitution by declarations of local policy.

Analysis of the respondents' application for rehearing promptly discloses that it is based upon a single ground, namely, that this Court should not have interfered with the injunction of the State Court because that injunction was purportedly based upon a policy of the State Court to the effect that peaceful picketing, for the purpose of seeking employment, by one who operates his business without employees, is "illegal".

This alleged ground for rehearing is not now presented to this Court for the first time; it was precisely upon the refutation of this argument that the petitioners' original brief was based, and upon which it is believed the decision of this Court was rendered.

The proposition argued by the respondents seeks to hoist itself by its own bootstraps. To argue that the Court of Appeals of the State of New York interferes with labor activities only when the object of the labor organization is illegal and that the legality of the object under consideration by the Court is determined by the Court alone, is to beg the entire question. This Court has not hesitated

to strike down interferences with the Constitutional guarantee of the freedom of speech, even when such interferences have been the result of legislative acts (*Thornhill v. Alabama*, 310 U. S. 88; *Carlson v. California*, 310 U. S. 106).

The essence of the Constitutional guarantee of freedom of speech is that it protects every variety of utterance, desirable or undesirable as it may seem to the local authorities. The guarantee is utterly futile, if it is construed merely to assure that the utterance of that which is currently acceptable to constituted state authority will be permitted. Such an assurance is vouchsafed by any despotism. The Constitution of a democracy which guaranteed no more would indeed disgrace democracy. The test of the validity of the Constitutional guarantee is specifically whether it assures that unpopular utterance will be permitted, so that men will today feel free to speak the unpleasant words which, wisely or foolishly, they hope will become the law of the land tomorrow. Fine-spun qualifications of this basic concept lead to its utter destruction. Once a small inroad has been made into the territory of freedom of speech, once the defenses have been encircled, the entire territory is doomed. If the use of the term "illegal" by a state court is deemed automatically to confer upon its decisions a sacred immunity from review upon Constitutional grounds, there will remain no area of utterance whatever which is free from invasion.

It has always been freely acknowledged by the petitioners that criminal or tortious conduct, disguised as an exercise of the privilege of free discussion, is patently without the protection of the Constitutional guarantee. Thus, when attempts have been made to use the privilege as a cloak for obscenity, for violence or for fraud, this Court has promptly declared that the Constitutional guarantee is inapplicable. In such cases the claim of the privilege amounts to a fraud upon the Court, for there is primarily involved a specific criminal or tortious act, and

the use of speech is merely secondary and subservient to such act.

The power and duty of the Court to strike down such subterfuges is not, however, to be misunderstood. A state court may not, while purporting to exercise that power, arrogate to itself the additional authority to curtail freedom of discussion by arbitrarily affixing thereto the label of "illegality". In the case at bar, there was neither violence, nor fraud, nor disorder, nor coercion, nor threat thereof. The Trial Court explicitly found:

"52. That such picketing as occurred herein was conducted without any violence whatsoever or threat of violence" (R. 55).

"53. That such picketing as was conducted herein was in no respect disorderly" (R. 55).

"54. That the placards used by the pickets were accurate and at no time was there any misrepresentation or misstatement made either through placards or oral statements" (R. 55).

"75. That what was done by the defendants and, as heretofore mentioned, was done in a peaceful and orderly manner" (R. 59).

To label peaceful utterance, under such circumstances, "illegal", in order to justify suppression thereof, because the state court happens to disapprove of the Union's objective is merely an attempt to rationalize a violation of the Constitution.

Neither state courts, nor state legislatures are free, under our Federal Constitution, to dictate the circumstances under which freedom of speech may be exercised. "Unlawful objectives", whether in the field of labor relations or elsewhere, may not be judicially created for the purpose of justifying encroachment upon the Constitution privilege. Use of the term "illegal" bestows no sanctity upon legislative or judicial censorship.

There can no longer be any doubt that in attempting to brand as "illegal" and prohibit peaceful picketing by labor unions in situations wherein the ~~Constitutional~~ employment relationship did not happen to exist, the Court of Appeals of the State of New York infringed upon the Constitutional guarantee of freedom of speech. That the Court had embarked upon a dangerous and unauthorized course, which, if followed, would inevitably lead the Court to assume complete dictatorial supervision of labor organizations, was subsequently demonstrated by the language of the majority of that Court in the case of *Opera on Tour v. Weber*, 285 N. Y. 348:

Conventional

"For a union to insist that machinery be discarded in order that manual labor may take its place and thus secure additional opportunity of employment is not a lawful labor objective. In essence the case at bar is the same as if a labor union should demand of a printing plant that all machinery for typesetting be discarded because it would furnish more employment if the typesetting were done by hand. We have held that the attempt of a union to coerce the owner of a small business, who was running the same without an employee, to make employment for an employee, was an unlawful objective and that this did not involve a labor dispute (*Thompson v. Boekhout*, 273 N. Y. 390). So, too, in a case just unanimously decided, we held that it was an unlawful labor objective to attempt to coerce a peddler employing no employees in his business and making approximately thirty-two dollars a week, to hire an employee at nine dollars a day for one day a week (*Wohl v. Bakery and Pastry Drivers*, 284 N. Y. 220)" (285 N. Y. 348, 357).

The minority of the Court of Appeals in that case recognized the danger in the policy of the Court and the violation of the Constitution which it involved, and the Chief Judge, in dissenting, forcefully stated that the injunction approved by the majority constituted

"* * * an intrusion by the Court into a field from which it is excluded under the law of the State as

formulated in an unbroken line of judicial decisions, by statute of the Legislature, and by the Constitution * * * " (285 N. Y. 348, 366).

It is noteworthy that the majority of the New York Court of Appeals has finally recognized the significance of the decisions of this Court in *American Federation of Labor v. Swing* and in the case at bar, as is shown by the recent decisions of the Court of Appeals in the cases of *People v. Bergstein*, N. Y. , and *People v. Muller*, N. Y.

(not yet officially reported; both decided July 29, 1941). The soundness of the decision of this Court in the case at bar is beyond reasonable question. No substantial ground for rehearing has been set forth in the respondents' papers. It may fairly be stated that if the decision of this Court had been otherwise, the vitality of the most important provision of the Constitution of the United States would have been utterly destroyed.

CONCLUSION

The application for rehearing should be denied.

Respectfully submitted,

EDWARD C. MAGUIRE,
Attorney for Petitioners.

Of Counsel:

EDWARD C. MAGUIRE
SAMUEL J. COHEN.

FILE COPY

No. 901

FILED

JAN 9 1942

CHARLES CLYDE CROPLEY
CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1940.

BAKERY AND PASTRY DRIVERS AND HELPERS
LOCAL 802 OF THE INTERNATIONAL BROTHER-
HOOD OF TEAMSTERS, PETER SULLIVAN, indi-
vidually and as President of the said Union, PADDY
SULLIVAN, individually and as an officer of said Union,
and HYMAN BERNSTEIN, individually and as business
agent of said Union, all of 265 West 14th Street,
New York City,

Petitioners,

against

HYMAN WOHL and LOUIS PLATZMAN,

Respondents.

BRIEF FOR RESPONDENTS.

HYMAN WOHL,
LOUIS PLATZMAN,
Respondents in Person.

Of Counsel:

JOSEPH APFEL,
ARTHUR STEINBERG.

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Street, New York City,

Petitioners,

against

HYMAN WOHL and LOUIS PLATZMAN,

Respondents.

BRIEF FOR RESPONDENTS.

Statement of the Case.

On October 20th, 1941, this Court granted respondents' petition for a rehearing and vacated the judgment of reversal, dated June 2nd, 1941, and recalled its mandate (R. 197).

A: Summary of Testimony

The material facts pertaining to this action are as follows:

The respondent, Wohl had been in business for five years buying baked products from bakers and reselling them at a small profit to grocery stores. At the time picketing commenced, he was purchasing merchandise from four different bakeries, being, at liberty at any time to change to any other bakeries; during the past five years he owned a truck which at the time of the trial was registered in his own name (R. 64, 65, 67). His approximate weekly earnings were about \$32.00 and he supported an aged mother and two motherless daughters. He did not have enough work for himself and did not require anyone to assist him in his business. He worked about thirty to thirty-five hours a week which hours were spread over a seven day week, two hours of which were worked on Sunday (R. 66, 67). Wohl usually commenced work at about 5:00 A. M. in the morning and completed his first run on his route at 7:00 A. M. Then about 8:00 A. M. he began a second delivery which was completed about 10:30 A. M. Thereafter he was through for the day (R. 81, 82, 84). Previously, the Union had compelled him to hire a relief man one day a week for ten weeks (R. 90) and that he let him go because he was falling behind in his bills and could not pay for this service (R. 92).

On December 14th, 1938, a member of the defendant union gave him a letter signed by the business agent advising him that a member of the Union would come to work in the respondent's place the coming Sunday. The respondent returned this letter advising the Union representative, "I have no work for him and I could not afford to pay him \$9.00 for a day's work", whereupon the representative of the Union said, "Well, let us follow him up boys and let us picket his stores."

On December 16th, 1938, the business delegate of the Union spoke to him, accompanied by four others, when he was about to obtain products from one of the bakeries he did business with. Mr. Platzman, the other respondent,

as also present. Respondents were advised, "Why don't you leave that man work this morning that I sent in." Respondent Platzman replied, "I could not afford it, and have no work for myself, and I cannot afford to pay money out that I don't need, for \$9.00 a day . . . What do you want me to do in order for you \$9.00, I should starve?" Whereupon, the business delegate replied, "I don't care what you do, if you eat or if you don't eat, but the \$9.00 must be paid regardless. If you cannot pay the \$9.00, take your truck, put it in storage, and get out of business." Platzman replied that he would not do so, whereupon, the business delegate informed the proprietor of Diamond Bakery, one of the bakeries from which the respondents purchased products, "Regardless, I don't want to know, you will have to pay for the day if Platzman don't pay for the day's work" and directed this proprietor not to bake any merchandise for the respondents (R. 70, 71). Wohl was also advised that the same applied to him. The delegate thereupon advised two members of the Union to take signs and follow the respondents and "see to it that in any place he delivers any merchandise to tell the customers that if they accept the merchandise they will picket his store." Wohl thereupon told the delegate, "I cannot afford to pay \$9.00, Mr. Bernstein, and I ain't got enough work for myself. I have only got five hours work a day; I have only got maybe two hours work on Sunday." Whereupon, Mr. Bernstein replied, "I don't want to know what happens; \$9.00 must be paid for a day's work regardless of when I sent them in" (R. 72).

On January 23rd, 1939, pickets appeared in front of Diamond Bakery. On January 25th, 1939, the Union delegate appeared at another bakery when the respondent Wohl was about to receive merchandise and advised the owner thereof that if any merchandise was sold to the respondents his bakery would be picketed. The respondents nevertheless obtained merchandise and pickets appeared in front of that bakery immediately (R. 72, 75).

On the same day pickets were also present at the Diamond Bakery. No further picketing occurred because at the time the motion for a temporary injunction was argued, counsel for the petitioners stipulated "that the pickets would be withdrawn and the matter remain in *status quo* until the disposition of the case on the trial" (R. 77).

Respondent Platzman was in business for two years. He purchased his merchandise from two bakeries and was under no obligation to continue purchasing from them and was at liberty at any time to change his source for products (R. 100, 101). He worked about sixty-five hours per week and earned about \$35.00 per week. On December 15th, 1938, he saw the union delegate who came over to him and told him that he "was sending me a man on the following day, Friday, to work for me" saying that "there was nothing to talk about, he was sending a man in, I will take him on. I told him if he did it it would be a foolish thing. He would only waste his time. He started holding my truck." The following day the same delegate demanded that he hire a man that morning and respondent advised him, "I would not let him work because I could not afford it." The delegate nevertheless told him, "that man would be paid for that day, regardless of whether I let the man work or not, and that I would take a man on every week and pay him for it." Platzman replied, "I could not afford it." The union representative declared, "If you cannot afford it you should put your truck in storage and pack up your business. * * * He did not care whether I starved or not, that \$9.00 had to be paid." The delegate thereupon advised the proprietor of the bakery that "he is holding him personally responsible that in the event he baked for me the following time, he would have to pay for every one of the days I would not pay a man for." The delegate then advised respondent Wohl that the same applied to him (R. 102, 103). The delegate also

advised members of the Union to follow the respondents and go into each and every store I (Platzman) deliver merchandise to, and tell them to stop taking merchandise from me or else they will picket the store." That thereafter pickets also appeared in front of the Diamond Bakery Co. and members of the Union followed him to about nine stops (R. 104). Members of the Union went into the retail stores, following the respondent, and advised the owners thereof that Platzman "was not a Union man, and that if they accept merchandise from me, the following day they would picket the store" (R. 107). He did not employ anyone (R. 108).

The owner of one of the bakeries testified that the union delegate advised him to tell the respondents that they would have to furnish a day's employment each week and that "he held me personally responsible, if I were not to tell them, or they were not to give the work" (R. 117, 118) and "that the reason why the pickets were there is because these boys did not give Union men work, and that I would be responsible for the two days previous that the Union men came in and were not employed by these people" (R. 119). The delegate gave a one day notice that the bakery stop baking for the respondents (R. 119). He nevertheless sold merchandise to the respondents and pickets appeared in front of his place of business (R. 120).

Not one word of this testimony was contradicted by the petitioners. Not one witness, among the many who were named by the respondents, took the witness stand to refute any portion of this testimony. The petitioners, for their entire case, made certain offers of proof through counsel, concerning general conditions in the trade and certain general practices of peddlers, very few of which were connected up with the respondents herein.

Among the offers of proof, defendant stated that during the eighteen month period preceding the dispute herein, approximately one hundred fifty drivers, members of the

Union, were required to sever their connections with employers unless they undertook to become peddlers or jobbers, working for their former employers and serving the same as heretofore (R. 51). The petitioners also stated that out of such one hundred fifty drivers about fifty members of the Union became peddlers and abandoned their membership in the Union (R. 52). Thus it appears that this condition started three and one-half years after respondent Wohl began his business, and one-half year after Platzman became engaged in his enterprise. *The Union did not produce any testimony showing that any other peddlers, retail stores or bakeries had ever been picketed. Petitioners did not show that they had ever appealed to the public, retail stores or bakers protesting against the alleged evils of the peddler system.* The petitioners did not offer any testimony showing that it had ever engaged in any industry-wide campaigns, as other Unions have done, to expose and eradicate the alleged evils of the peddler system. The uncontradicted proof established that the Union seized upon the pretext that the respondents were peddlers for the purpose of forcing them to furnish unnecessary employment—help which the respondents did not require in the normal conduct of their business nor could they afford to pay for.

The trial Court saw through this sham, in its decision, when it found that the intent and primary purpose of the Union was to compel the respondents to hire unnecessary help. The Court said, "The proof is that the defendant threatens to picket these manufacturers and the various customers of the plaintiffs unless each of the plaintiffs employs a member of the defendant Union one day a week to assist them" (R. 180). This decision and the findings were affirmed by two Appellate Courts and unequivocally established the real purpose and intent of the petitioners herein. The attempt of the Union to change its position after litigation was commenced by relying upon the

"peddler system" in an effort to justify and escape the consequences of its conduct, did not deter the trial Court in determining the true intent of the combination. The trial Court, at the request of the petitioners herein, refused to find that the purpose of the picketing was to eradicate the peddler system. The Court refused the petitioners' request to find that they had "solely acted with the desire and purpose of maintaining Union wages, hours and conditions and in the definite belief that the extension of the peddler system, uncontrolled and unregulated, already has partially weakened the maintenance of this Union's wages, etc." (R. 35, 36). The Court further refused to find that the sole purpose of the picketing was to eradicate the peddler system and that "the action of the defendants would reasonably be expected to aid in carrying out the purposes of the defendant Union" (R. 42).

B: The Acts and Conduct Enjoined

The injunction is very short, concise, and narrowly drawn. It deals specifically and only with the conduct described in the testimony and disapproved of by the Court.

The trial Court found as a conclusion of law:

"2. That the plaintiffs are the sole persons required to run their business and therefore they are not subject to picketing by a Union or by the defendants who seek to compel them to employ Union labor" (R. 59).

Thus, the Court fixed the reason why the respondents are not subject to picketing, to wit: Inasmuch as they are the sole persons required to conduct their businesses, the Union may not picket for the purpose of compelling them to employ unnecessary labor.

The judgment under review merely enjoins the defendants:

"(a) From picketing the places of business of manufacturing bakers who sell to the plaintiffs or either of them because of the fact that said manufacturing bakers sell to these plaintiffs; and

(b) From picketing the places of business of customers of these plaintiffs because such customers purchase baked products from these plaintiffs" (R. 62).

It is apparent that the injunction is very limited and prohibits only the conduct indulged in by the defendants for the purpose of compelling respondents to hire unnecessary help. The decree does not prohibit the petitioners herein from engaging in a campaign to eradicate the peddler system throughout the trade. It does not prevent the Union from advertising by means of circulars, newspapers, oral statements, direct communications and other means to all stores and bakers with which the respondents deal. The only prohibition as far as the respondents' customers and bakeries are concerned is against picketing. All other means are still at the disposal of the petitioners. The decree in no way affects the rights of the petitioners to expose the so-called evils of the peddler system and to bring such evils to the attention of the public and all those in the trade directly interested. The decree does not prohibit the Union from picketing all other bakeries and retail stores in the industry in their legitimate endeavors to prevent the spread and growth of the peddler system.

Statements in the petitioners' brief under "Specifications of Errors to be Urged" (p. 9), that the injunction "absolutely prohibited the exercise of the constitutional privilege of freedom of speech" are inaccurate. No absolute sweeping, or broad prohibition is involved herein. The specific conduct in furtherance of the specific unlawful

purpose is enjoined. The petitioners are at liberty, at any time, to take all customary steps, as other Unions have done, to attempt to destroy and liquidate the peddler system. They cannot, however, picket respondents' few manufacturers and small number of customers to compel the plaintiffs to hire unnecessary help and to abstain from performing all their work in their own business.

C. The danger to the multitudes of small businesses in the City of New York in permitting picketing for the sole purpose of compelling a merchant who works alone to hire unnecessary help, and its resulting serious social and economic evil.

We are dealing with a principle of law, the application of which may vary in degree, depending upon the extent of the demands of a Union. If a State permits picketing for the sole purpose of compelling such small business men to furnish unnecessary employment, it is then obvious that so long as the right is given, no one but Unions can determine the amount and duration of employment sought. Although in the instant case, the petitioners sought employment for one day per week, it cannot be denied that if they are given the legal right to do this by the means they have used, then they would be within their rights in demanding, two, three or six days' work per week throughout the year. At the end of the year they would be at liberty to continue this practice, year after year. If permitted to force the hiring of one man certainly they would have the right to insist upon the hiring of an additional employee or employees to assist the first employee. This is so because once the right is granted, whether the demands of a Union are great or small, the little business man with whom we are concerned can never be heard to protest, even when the application of the rule varies in degree to the point where annihilation of his business is imminent or an accomplished fact.

The State of New York in shaping its public policy has declared that no Union may picket any of its small businessmen for the purpose of compelling them to hire unnecessary help, where such proprietors operate their business alone without any employees. This public policy applies alike to the tens of thousands of retail stores of various kinds, as well as to the bootblack, the news vendor, the peddler, the small manufacturer, etc. From the cases hereinafter referred to, it will be seen that many Unions in the City of New York have sought by means of picketing to compel such small businessmen to hire an unnecessary employee anywhere from one day per week to six days per week throughout the year. In some cases Unions have sought to compel the hiring of more than one employee.

This dispute arose in the City of New York with its more than seven millions of inhabitants. New York City, the largest city in the world, is a highly industrialized and commercialized community. In the past five years, during the rapid rise of labor Unions throughout the nation, Unions have also made marked progress in the City of New York. It is common knowledge that within the City of New York there are situated tens of thousands of individuals conducting small businesses, alone without hiring any employees, except in some cases for the occasional assistance of a spouse or child. Included among such businesses are thousands upon thousands of retail stores—the neighborhood grocer, shoe maker, vegetable store, tailor, baker, candy store, etc. and countless others. In addition, there are thousands upon thousands of small manufacturers who operate without help, as well as jobbers, peddlers, etc. Unions, in an effort to alleviate their unemployment, made it a practice, during the past few years to compel persons who are operating a one-man business without help, to hire unemployed members of the Union anywhere from one day a week to six days per week throughout the year. The mere threat of a picket

was sufficient in many instances to compel acquiescence to the demands of the Unions. Poor, defenseless and hard working men who toiled through long hours of labor were thus forced to part with moneys, in many cases, sorely needed in their own businesses and for the support of their families. Where the demands of a Union were refused, pickets were placed in front of stores or other places of business with signs and placards which bore the words, "Unfair"—"This store refuses to employ Union labor"—"Unfair to organized labor"—"Non-Union labor used" and many other phrases of similar import, all of which truthfully informed passersby of a certain fact or opinion. Such picketing, except in extremely few cases, caused complete capitulation in a very short time. The severe loss of business as a result of such picketing left the proprietors with no alternative but to spend moneys for unnecessary services. Thus, proprietors who had operated for years without help, fell prey to such activity. Such conduct on the part of some Unions amounted to nothing more than extortion.

The Courts of the State of New York in shaping the public policy best suited to the inhabitants of that State declared that policy to be that where a person conducted a business without employing any employees a Union could not picket such employer for the purpose of compelling him to hire unnecessary help. In establishing this public policy the Courts of the State of New York did not prohibit picketing for all purposes where such employers were affected. The prohibition against picketing was directed solely against Unions when they sought to compel the hiring of unnecessary help. This was done for the purpose of eradicating the great social evil whereby one class of individuals combined into powerful Unions were able, through the great power which such combinations gave them, to force tens of thousands of small business men individually to part with hard earned moneys

and small profits which long hours of labor brought to them, in return for services which they did not require. It was inevitable that any State which would permit the power of trade Unions to be exerted for such purposes would deprive small businesses of an opportunity of thriving and growing and in many cases permit an unwarranted drainage of capital from such small businesses to the point where bankruptcy and insolvency would result. In the interests of a sound public policy Unions were not permitted to use their power against a one-man business for the purpose of dictating how many employees or amount of employment such business should furnish. Thus, the constitutional right of such small business men to conduct their businesses without unjustified interference was protected.

In so doing, the State of New York was preventing a condition which must be viewed as a serious evil—one which was immediate and pressing. Prohibiting picketing for this sole purpose was extremely necessary to protect the property, the small capital and income of these business men. To many, hiring of unnecessary help would mean a smaller income for living purposes, to others it would mean practically no income, and to some, in many cases it would mean using capital assets of the business for support and maintenance. Thus, the standard of living of some would be drastically lowered; others in a short time would face insolvency and bankruptcy, and where insolvency would occur it must be remembered that not only the proprietors would suffer, but his jobbers and manufacturers and their employees would likewise be affected by such loss. Such small proprietors whose businesses would be so dissipated would then become public charges depending upon charities and relief for the support of themselves and their families. Not only would these unfortunate persons be unjustifiably deprived of their property and money, but the State would ultimately

be the greatest loser. The eventual extinction of this class of proprietor—our middle class, often referred to as the backbone of the nation—would result in great social and economic evil to the State. These numerous business men are tax payers who are a substantial source of revenue upon which the State depends to help maintain the community. Besides losing this revenue, the State would be called upon to increase its contributions for charity, not only for the individual, but for the members of his family as well. In addition, it is common knowledge that relief allowances are insufficient to maintain oneself in a proper state of health. Thus, the health of thousands of its residents would also be affected by a lower standard of living.

This nation has always prided itself that under our laws and constitution this country is a land of opportunity for the individual. Permitting the practice of the petitioners herein would necessarily result in this opportunity being forever removed. There would no longer be an incentive for the individual to use his skill, knowledge, ability and capital to create, produce or to better himself. The fear that the moment he opens a small business, a Union will demand the hiring of unnecessary help would be sufficient to deter him from engaging in business. The dilemma of such proprietor is also increased by the almost complete unionization of industry as it exists today. Having been forced out of business, there would be only two alternatives left, (1) to seek employment as an employee, (2) to attempt to go back into business again. With respect to the first alternative we must recognize that with industry so well organized by trade unions today, it is virtually impossible for newcomers to obtain membership in a Union. Employment in a particular industry is reserved for the unemployed members of the Union. This is particularly true where the closed shop principle has been adopted and has been in effect in New York for many years. So long as unemployment exists, labor Unions

will not accept strangers as members. Therefore, opportunities for employment would be limited. The second alternative offers the proprietor small solace. To return to business again would be, at best, only a temporary measure. The means resorted to by labor Unions to compel the hiring of unnecessary labor, would stand as an ever overhanging threat, and if enforced, would once more result in a cessation of business. Therefore, finding the avenues of employment practically closed because of the organization of Unions under the closed shop principle in New York and with no incentive or future in returning to business, the small businessman would appear to be doomed to a permanent status on the relief rolls of the State.

Furthermore, such practices tend to have a bad effect upon the workers themselves. Instead of honest effort being directed toward creating and producing for the good of the community, workers will rely upon this modified form of extortion, as a means to an end. It is to the economic interest of the State as well as the nation that workers use their labor to create, manufacture and produce. Approval of the doctrine contended for by the petitioners would only make for economic waste and unnecessary duplication of effort.

And lastly, today, the need for protection of the little business man is greater than ever. With the growth of big business and the rapid rise of chain store competition, the little businessman has found it more difficult to exist. Big business and chain stores with their unlimited capital and improved methods, buy and merchandise at lower prices and undersell the small proprietor. The principal reason why the little businessman has been able to survive is by personally laboring longer hours in his business. This personal effort and personal service rendered to his customers has universally been recognized as the main reason for his continuance. To remove the barrier of pro-

tection which the State of New York has thrown up to protect its multitudes of small proprietors, when Unions seek to force the hiring of unnecessary help, would strike the death knell for the multitudes of small businesses in New York and result in great social and economic evil to the State.

POINT I.

The Court of Appeals of New York has held that picketing to compel an employer who operates a business alone to hire unnecessary help is in furtherance of an unlawful purpose.

See:

Thompson v. Bockhout, 273 N. Y. 390;

Luft v. Flove, 270 N. Y. 640;

Boro Park Sanitary Live Poultry Market v. Heller,
280 N. Y. 481;

Goldfinger v. Feintuch, 276 N. Y. 281.

In the *Goldfinger* case the Court, in referring to the *Thompson* and *Luft* cases declared that the "purpose" of picketing, in such cases to compel the hiring of unnecessary labor "was unlawful."

The latest expression of this public policy is found in the case of *Opera-on-Tour v. Weber*, 285 N. Y. 348, where that Court in referring to the decision in this case, as well as *Thompson v. Bockhout*, said:

"We have held that the attempt of a union to coerce the owners of a small business, who was running the same without an employee, to make employment for an employee, was unlawful objective and that this did not involve a labor dispute (*Thompson v. Bockhout*, 273 N. Y. 390). So, too, in a case that we unanimously decided, we held that it was an unlawful labor objective to attempt to coerce a peddler employing no employees in his

business and making approximately thirty-two dollars a week, to hire an employee at nine dollars a day for one day a week (*Wohl v. Bakery and Pastry Drivers*, 284 N. Y. 220)."

That the petitioners herein come within the prohibitions laid down by these cases is clear for on page 3 of their brief they now admit:

- "The specific object of the union was to induce the respondents, who worked seven days each week without respite, to hire members of the union as relief drivers for one day of the week, * * * ."

Unions in New York, during the past few years, made it a practice to compel such employers to hire unnecessary help and to abstain from performing all their work. Our Courts on countless occasions were called upon to enjoin this conduct which not only unjustifiably deprived the residents of the State of their property, and an opportunity to work with their own hands, but in addition endangered the social and economic structure of the State. A glance at some of the decisions rendered by the New York courts dealing with such an objective reveals that this practice was serious and widespread. See: *Botnick v. Winokur* (1939), 7 N. Y. S. (2d) 6; *Kershner v. Heller*, 14 N. Y. S. 2d 595; *Gips v. Osman*, (1939), 170 Misc. 53, aff'd 258 A. D. 789; *Miller v. Fish Workers Union* (1939), 170 Misc. 713; *Pitter v. Kaminsky* (1939), 7 N. Y. S. (2d) 10; *Lyons v. Meyerson* (1940), 18 N. Y. S. (2d) 363; *Paul v. Mencher* (1939), 169 Misc. 657; *Wishny v. Jones* (1939), 169 Misc. 459; *Pappas v. Straughn*, New York Law Journal 9/11/40—p. 593; *Sussman v. Maltz*, *ibid.*, 9/21/40—p. 731; *Zawin v. Doe*, *ibid.*, 7/15/40—p. 111; *Gilordi v. "John Doe"*, *ibid.*, 10/10/40—p. 1033; *Goldberg v. Straughn*, *ibid.*, 10/8/40, Justice MAY, Kings County Supreme Court, Special Term Part I; *Marvin v. Frisch*, *ibid.*, Supreme Ct. N.

Y. County, Sp. Term Part III, Justice SCHMUCK, 10/6/39; *Simon v. Boris*, *ibid*; Bronx Supreme Court, Spec. Term Part I, 1/24/39; *Bieber v. Binenbaum*, *ibid*, Special Term I, Bronx Supreme Court, 8/2/1938; *Schlossberg v. Winokur*, *ibid*, Special Term, Supreme Ct., Queens County, 5/12/39; *Leach v. Himmelfarb*, *ibid*, 2/23/40—p. 843; *Anastasion v. Supron*, *ibid*, 5/24/40—p. 2371; *Ziveibon v. Goldberg*, *ibid*, 4/19/40—p. 1789.

In addition, numerous other cases, not officially reported, appeared in the New York Law Journal. Further reference to them would be repetitious and unduly burden this brief.

POINT II.

The unlawfulness of such objective is a question of local policy to be determined by the Court of Appeals of New York. This Court will not interfere with such decision.

In an analogous case, this Court in *Senn v. Tile Layers Protective Union*, 301 U. S. 468, held that the law as declared by the highest Court of the State determines whether such activity may be permitted and that it was no concern of this Court what the public policy of the State was in this regard. There, a Union sought by means of pickets to compel a proprietor of a small business to refrain from working in his own business. Justice BRANDEIS said:

"Whether it was wise for the State to permit the Union to do so is a question of its public policy—not our concern."

For this Court to say, as petitioners urge, that the State of New York may not declare such an objective to be inimical to the best interests of its residents, as well as the State, would intrude into the State's realm of policy making. Justice BRANDEIS also said that it was for the

State Court to decide whether picketing for such an objective was for a lawful or an unlawful end.

Consistently with the preservation of a constitutional balance between State and Federal sovereignty, the United States Supreme Court must respect and is reluctant to interfere with the States' determination of local, social or economic policy. (*Avery v. Alabama*, 308 U. S. 444; *Green v. Frazier*, 253 U. S. 233, 239, 240; *Nebbia v. New York*, 291 U. S. 502, 537-8.) The State Courts have supreme power to interpret written and unwritten laws of the State. This Court will not attempt to decide local questions, the final judgment of the State Court being viewed as final. (*Brinkerhoff-Faris v. Hill*, 281 U. S. 673; *American Ry. Express v. Commonwealth of Kentucky*, 273 U. S. 269; *United Gas v. State of Texas*, 303 U. S. 123.)

POINT III.

Picketing in furtherance of an unlawful purpose may not be protected under the guise of freedom of speech.

Such a prominent guardian of civil liberties as Justice CARDOZO, while sitting on the New York Court of Appeals bench, concurred in two outstanding opinions wherein the right of picketing to accomplish an unlawful purpose was withdrawn from labor Unions. In the oft-quoted case of *Exchange Bakery & Restaurant v. Rifkin*, 245 N. Y. 263, it was said:

What one man may do, two may do or a dozen, so long as they act independently. If, however, any action taken is concerted; if it is planned to produce some result, it is subject to control. As always, what is done, if legal, must be to effect some lawful result by lawful means, but both a result and a means lawful in the case of an individual may be unlawful if the joint action of a number.

"A combination to strike or to picket an employer's factory to the end of coercing him to commit a crime, or to pay a stale or disputed claim, would be unlawful in itself, * * * Likewise a combination to effect many other results would be wrongful. * * * Another's business may not be so injured or ruined. It may be attacked only to attain some purpose in the eye of the law thought sufficient to justify the harm that may be done to others.

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"Where the end or the means are unlawful and the damage has already been done, the remedy is given by a criminal prosecution or by a recovery of damages at law. Equity is to be invoked only to give protection for the future. To prevent repeated violations, threatened or probable, of the complainant's property rights, an injunction may be granted. * * * Freedom to conduct a business, freedom to engage in labor, each is like a property right. Threatened and unjustified interference with either will be prevented."

In *Interborough v. Lavin*, 247 N. Y. 65, 82, 83, the same Court held:

"In this state the courts may interpose their mandates between contesting parties only where there is attempt to effectuate a lawful purpose, or to effectuate a lawful purpose by unlawful means. * * * Business and property rights in their broadest sense should be immune from malicious interference. They rest upon established principles of law; they are subject to attack within limits fixed by law."

Justice CARDOZO, in another renowned case, *Nann v. Raimst*, 235 N. Y. 307, 317, after citing and quoting from *Exchange v. Rifkin*, said that a Court of equity,

"intervenes in those cases where restraint becomes essential to the preservation of a business or of other property interests threatened with impairment by illegal combinations or by other tortious acts, *the publication of the words being merely an instrument and incident.*" (Italics ours.)

This Court has approved of the same doctrine:
See:

American Foundries v. Tri City Council, 251 U. S. 184;

Gompers v. Bucks Stove and Range Co., 221 U. S. 418;

Dorchy v. Kansas, 272 U. S. 306, 311;

Truax v. Corrigan, 257 U. S. 312.

In *Gompers v. Bucks Stove, supra*, a decision concurred in by Justice HOLMES and later referred to by him in his opinion in *Schenck v. U. S.*, 249 U. S. 47, 52, the defendant insisted "that the Court could not abridge the liberty of speech . . . that the injunction as a whole was a nullity." However, this Court said:

"Society itself is an organization and does not object to organizations for social, religious, business and all legal purposes. The law, therefore, recognizes the right of workingmen to unite and to invite others to join their ranks, thereby making available the strength, influence and power that come from such association. By virtue of this right powerful labor unions have been organized."

But the very fact that it is lawful to form these bodies, with multitudes of members, means that they have thereby acquired a vast power, in the presence of which the individual may be helpless. This power, when unlawfully used against one, cannot be met, except by his purchasing peace at the cost of submitting to terms which involve the sacrifice of rights

protected by the constitution; or by standing on such rights and appealing to the preventive powers of a court of equity. When such appeal is made it is the duty of government to protect the one against the many as well as the many against the one.

In the case of an unlawful conspiracy, the agreement to act in concert when the signal is published, gives the words 'Unfair', 'We don't patronize', or similar expressions, a force not inhering in the words themselves, and *therefore exceeding any possible right of speech which a single individual might have*. Under such circumstances, they become what have been called 'verbal acts', and as much subject to injunction as the use of any other force whereby property is unlawfully damaged." (Italics new.)

In *Dorchy v. Kansas*, *supra*, p. 311, Justice BRANDEIS stated that concerted action to accomplish illegal purposes was not permissible. He said:

"The right to carry on business—be it called liberty or property—has value. To interfere with this right without just cause is unlawful. The fact that the injury was inflicted by a strike is sometimes a justification. But a strike may be illegal because of its purpose, however orderly the manner in which it is conducted. To collect a stale claim due to a fellow member of the union who was formerly employed in the business is not a permissible purpose.

* * * To enforce payment by a strike is clearly coercion. The legislature may make such action punishable criminally, as extortion or otherwise.

* * * Neither the common law, nor the Fourteenth amendment, confers the absolute right to strike. Compare *Aikens v. Wisconsin*, 195 U. S. 194, 204-5."

That this should be the law is sound, because freedom of speech or picketing and strikes should not be permitted to assist those who pervert its legitimate use by employing

it for objectives condemned by society in general. Otherwise, there will be no protection in cases where a representative of the Union might demand a lump sum of money under the threat of picketing if an employer under such circumstances were to refuse to become a party to such attempted extortion. It is inconceivable that any society would permit such representatives of labor to picket the premises of an employer under the pretext or feigned issue that he was unfair.

In the case at bar, after litigation was commenced, the Union sought to justify its conduct under the pretext that it was thereby seeking to solve the problem of the peddler system. However, the Trial Court refused to find that that was their purpose and, based upon the uncontradicted evidence, found that the primary purpose was to compel the hiring of unnecessary labor. Mr. Justice HOLMES recognized this in *Aikens v. Wisconsin* (195 U. S. 194) where he said:

"When the acts consist of making a combination calculable to cause temporal damage, the power to punish such acts, when done maliciously cannot be denied because they are to be followed and worked out by conduct which might have been lawful if not preceded by the acts. No conduct has such an absolute privilege as to justify all possible schemes of which it may be a part. The most innocent and constitutionally protected of acts or omissions may be made a step in a criminal plot and if it is a step in a plot, neither its innocence nor the constitution is sufficient to prevent the punishment of the plot by law."

The mere fact that a labor union might feel that a peddler system is injurious to its members does not give it a right to extort money from small business men, nor does it give it the right to use pickets for the purpose of compelling such employers to commit a crime, or to fix the

prices of commodities, or for many other reasons which have been condemned as contrary to the wellbeing of our society. The issue in this case was not whether peaceful picketing was permissible to expose the evils of a peddler system. The only issue was whether the respondents could be coerced into hiring the amount of help the Union sought to impose upon them.

It was only after litigation commenced that the Union first raised the peddler system in an attempt to justify its legal conduct. However, the uncontradicted testimony, as well as the findings of the Trial Court, as affirmed by the Appellate Courts, showed that the Union really relied upon the peddler system as a pretext, and that it was not advanced in good faith. This is evidenced by the fact that instead of conducting a program of picketing throughout the trade generally to enlighten the public as to the evils of the peddler system, the Union merely demanded employment under the penalty of injuring the respondents' business. As was said in the case of *Auburn Draying Co. v. Wardell*, 178 App. Div. 270, affirmed 227 N. Y. 1:

"The general argument of good to labor conditions cannot be made a cloak to shield the actors from the consequences of acts done in furtherance of the unlawful purpose. * * * If it be unlawful, it may not be shielded behind general arguments for real or fancied good to organized labor."

To the same effect; see also

Vonnegut v. Toledo, 263 Fed. 192, 202.

In the recent case of *Hague, et al. v. C.I.O.*, 307 U.S. 496, Chief Justice STONE, in a concurring opinion, said:

"It has been explicitly and repeatedly affirmed by this Court, without a dissenting voice, that freedom of speech and assembly for any lawful purpose are rights of personal liberty secured to all persons, without regard to citizenship, by the due process

clause of the Fourteenth Amendment. *Gillow v. New York*, 268 U. S. 652; *Whitney v. California*, 274 U. S. 357; *Fiske v. Kansas*, 274 U. S. 380; *Stromberg v. California*, 283 U. S. 359; *Near v. Minnesota*, 283 U. S. 697; *Grosjean v. American Press Co.*, 297 U. S. 233; *De Jonge v. Oregon*, 299 U. S. 353; *Herndon v. Lowry*, 301 U. S. 242; *Lovell v. Griffin*, 303 U. S. 444." (Italics new.)

In *The Labor Injunction* (Frankfurter and Greene), page 25, it is said:

"The damage inflicted by combative measures of a union—the strike, the boycott, the picket—must win immunity by its purpose. But neither this nor any other formula will save the courts the painful necessity of deciding whether, in a given conflict, privilege has been overstepped. The broad questions of law—what are permissible purposes and instruments for damage,—and the intricate issues of fact to which they must be applied, together constitute the area of judicial discretion within which diversity of opinion finds ample scope."

In recognizing the right of workers to combine as a corollary to the dogma of free competition and as a means of equalizing the factors that determine bargaining power, the authors of that text said that the consequences sometimes result in hardships and cruelties, but where such effect to our competitive system occurs "Wise statesmanship here enters to determine at precisely what points the cost of competition is too great" (p. 205).

The State of New York in thus fixing its public policy has determined that "the cost of competition is too great".

Concededly, a labor Union or a resident of the State cannot be deprived of a right to picket or to exercise freedom of speech, where a State Court arbitrarily labels an

objective "unlawful". There is no magic in this word which will automatically deprive organizations and individuals of deep rooted constitutional rights. However, where the determination of the State Court is actually based upon an unjustifiable interference with the property rights of its resident, or where the exercise of such constitutional rights give rise to an immediate, serious, social or economic evil to the State itself, this Court will not interfere with any limited prohibition of the State Court.

It has been repeatedly held that a State, through its legislature or Courts, may permit the issuance of a narrowly drawn injunction to remedy a specific abuse where either of two conditions exist.

(1) To prevent an unjustifiable interference with the property or property rights of its residents, or

(2) To protect the State from serious, immediate, social or economic evil.

With respect to the first ground, an employer's business has been declared to be a property right and unjustifiable interference therewith may be enjoined. (*Exchange v. Rifkin, supra; Gompers v. Bucks Stove, supra; Truax v. Corrigan, supra; Senn v. Tile Layers Union, supra*, dissenting opinion.)

The power of a State to protect the property of its residents from unjustifiable interference cannot be doubted. In *Thornhill v. Alabama*, 310 U. S. 88, this Court said:

"The power and the duty of the State to take adequate steps . . . to protect the privacy, lives, and the property of its residents cannot be doubted."

To the same effect, see, *Carlson v. California*, 310 U. S. 106.

No one can deny or dispute the fact that the specific object of the petitioners, herein, to compel the plaintiffs to hire unnecessary help, or conduct of persons compelling

employers who operate alone to hire a steady employee for 52 full weeks a year, is an unjustifiable interference with the property rights of such employers. The disadvantages to the community far outweigh any temporary advantages which the petitioners may secure by their conduct. Under such circumstances, the end sought is not justifiable. (*The Labor Injunction*; Frankfurter and Greene, p. 24; Holmes, *Privilege, Malice and Intent*, 8 Har. L. Rev. 1; Holmes, *Aikens v. Wisconsin*, *supra*.)

There is also a long line of cases decided by this Court which forbid action which takes from the individual the right to engage in common occupations of life and which interferes with his engaging in a lawful business. In *Coppage v. Kansas*, 236 U. S. 1, 14, it was said:

"Included in the right of personal liberty and the right of private property—partaking of the nature of each—is the right to make contracts for the acquisition of property. Chief among such contracts is that of personal employment by which labor and other services are exchanged for money or other forms of property. If this right be struck down or arbitrarily interfered with, there is a substantial impairment of liberty in the long-established constitutional sense. The right is as essential to the laborer as to the capitalist, to the poor as to the rich; for the vast majority of persons have no other honest way to begin to acquire property, save by working for money."

In *Fick Wolf v. Hopkins*, 118 U. S. 356, 370, this Court stated:—

"For, the very idea that one man may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself."

This principle is reiterated in *Meyer v. Nebraska*, 262 U. S. 390, 399; *Butchers Union Co. v. Crescent City Co.*, 111 U. S. 746, 762; *Allgeyer v. Louisiana*, 165 U. S. 578, 589, and others which are more fully discussed in the dissenting opinion in *Senn v. Tile Layers Protective Union*, *supra*.

With respect to the second ground, it is submitted that picketing may be curtailed by a State Court by a narrowly drawn injunction prohibiting the specific abuse, where there is reasonable ground to fear that the exercise thereof will result in serious evil, and where there is reasonable ground to believe that the evil is a serious one, and that the danger apprehended is reasonably imminent.

In reviewing the important decisions of this Court bearing on this question, it is important to keep in mind the fact that in the instant case we are not dealing with a sweeping, broad or absolute restriction. Here, we have an injunction which is limited in scope and narrowly drawn, covering a specific abuse.

In *Milkwagon Drivers Union v. Meadowmoor Dairies*, 61 Sup. Ct. 552, the Union picketed against the "vendor system" whereby milk was sold by dairy companies to vendors who operated their own trucks, who in turn resold this product to retailers. This method of distribution was cheaper and enabled the dairies to sell milk to "cut rate" stores and these "cut rate" stores were enabled to sell milk at a lower retail price than that fixed by dairies employing Union labor. It also appeared the dairies considered these vendors their own employees, many of whom had formerly been chauffeurs who continued servicing the same routes after a change of status to "vendor". The Union in protesting, embarked upon an industry wide campaign of picketing for the specific purpose of compelling the retail stores and dairies to abandon completely this system of distribution, which was so injurious to the Union. However, the Union did not try to force a few

individual vendors to furnish unnecessary employment to its members. Picketing was undertaken to eradicate the entire evil and not as a subterfuge to force illegal concessions from a few vendors.

Justice FRANKFURTER upheld the injunction granted by the State Court because of violence which had occurred in the course of the picketing. He declared that free speech was not an absolute right and pointed out the distinction between a decree directed at a specific abuse and an abstract statute with an undefined threat to free utterance. He said:

“Such a decree, arising out of a particular controversy and adjusted to it, raises totally different constitutional problems from those that would be presented by an abstract statute with an overhanging and undefined threat to free utterance. To assimilate the two is to deny to the states their historic freedom to deal with controversies through the concreteness of individual litigation rather than through the abstractions of a general law.”

In distinguishing the *Thornhill* and *Carlson* decisions he said, “They involve statutes baldly forbidding all picketing.” Consequently, it is evident that the injunction issued in the case at bar, which applies to the particular controversy and is adjusted to it, raises a totally different constitutional problem than that in all the cases cited in the petitioners’ brief. Here, New York State dealt with a controversy “through the concreteness of individual litigation rather than through the abstraction of a general law.”

Justice FRANKFURTER, in discussing the right of a State to protect the property, privacy and peace of its residents, said, “In exercising its power a State is not to be treated as though the technicalities of the laws of agency were written into the Constitution.” Despite the existence of

Federal questions he said, "To maintain the balance of our Federal system, insofar as it is committed to our care demands at once zealous regard for the guarantees of the Bill of Rights and *due recognition of the powers belonging to the States.*" He further held that, "The law of a State may be fitted to a concrete situation through the authority given by the State to its Courts" and that an injunction granted by the State Court should be "read in the context of its circumstances" and "nor ought State action be held unconstitutional by interpreting the law of the State as though, to use a phrase of Mr. Justice HOLMES, one were fired with a zeal to pervert." The petitioners in their brief constantly refer to an absolute prohibition against the exercise of free speech and the right to picket. Reading the injunction herein with the reason for its issuance, the conduct enjoined is clear and specific and the interpretation thereof by petitioners is wholly unwarranted. In concluding, he said, "Just because these industrial conflicts raise anxious difficulties, it is most important for us not to intrude into the realm of policy making by reading our own notions into the Constitution."

Mr. Justice BLACK who dissented, admitted that an injunction or an act narrowly drawn to prevent a supposed evil would pose a different constitutional question and that in such cases, a declaration of the States' policy would weigh heavily in any challenge of the law as infringing constitutional limitations. However, he felt that the Supreme Court of Illinois in affirming the injunction had "not marked the limits of the rule with that clarity which should be a prerequisite to abridgement of free speech." His principal objection appeared to be that the decree was a "sweeping injunction" and that its language was so broad and general that it affected not only the direct participants in the dispute but could be construed to affect total strangers, members of the public who might innocently speak, write or publish an opinion concerning

the dispute. He said, "In the present case the prohibition against dissemination of information through peaceful picketing was but one of the many restraints imposed by the sweeping injunction." The decree in the instant case could not come within the condemnation of this opinion, but, on the contrary appears to fit into the exception which was noted therein:

In *Thornhill v. Alabama*, 310 U. S. 88, this Court struck down a broad and sweeping statute which prevented the peaceful dissemination of the facts of a labor dispute. Justice MURPHY referred to "the sweeping regulations" thereof and that the statute "does not aim specifically at evils within the allowable area of State control". In addition, he said, "a statute narrowly drawn to cover the precise situation giving rise to the danger" would present a totally different question from that before the Court. He was careful to point out that:

"It is true that the rights of employers and employees to conduct their economic affairs and to compete with others for a share in the products of industry are subject to modification or qualification in the interests of the society in which they exist. This is but an instance of the power of the State to set the limits of permissible contest open to industrial combatants. See Mr. Justice Brandeis in 254 U. S. at 488."

And that

"The statute as thus authoritatively construed and applied leaves room for no exceptions based upon either the number of persons engaged in the proscribed activity, the peaceful character of their demeanor, *the nature of their dispute with an employer*, or the restrained character and the accuracy of the terminology used in notifying the public of the facts of the dispute." (Italics ours.)

Thus it appears that although picketing is clothed with the right of free speech a State may make exceptions based upon the number of persons engaged in picketing, the peaceful character of their demeanor and depending upon "*the nature of their dispute with an employer*". This Court realized that there does exist occasions when the State must be permitted to restrain peaceful picketing where the nature of a dispute is such that it may amount to an unwarranted interference with the property rights of its residents or give rise to a serious evil against the State itself. The nature of the specific dispute herein is such, that it comes within the allowable area of State control.

In *Carlson v. California*, 310 U. S. 106, this Court struck down a Municipal ordinance prohibiting picketing and the display of banners at the scene of a labor dispute on the ground that it violated the constitutional guarantee of free speech. There, too, the statute was a broad sweeping one and came within the condemnation of the *Thornhill* case. The Court said:

"The sweeping and inexact terms of the ordinance disclose the threat to freedom of speech inherent in its existence."

Schneider v. State of New Jersey, 60 Sup. Ct. 146, involved broad and general ordinances in Irvington, New Jersey; Milwaukee, Wisconsin; Los Angeles, California; and Worcester, Massachusetts, prohibiting distribution of handbills on the public streets. The Court there said:

"As cases arise, the delicate and difficult task falls upon the Courts to weigh the circumstances and to appraise the substantiality of the reasons advanced in support of the regulation of the free enjoyment of the rights."

In *Whitney v. California*, 274 U. S. 357, Justice BRANDEIS in referring to broad and absolute statutes and injunctions, said:

"But, although the rights of free speech and assembly are fundamental, they are not in their nature absolute. Their exercise is subject to restriction, if the particular restriction proposed is required in order to protect the State from destruction or from serious injury, political, *economic* or moral. That the necessity which is essential to a valid restriction does not exist unless free speech would produce, or is intended to produce, a clear and imminent danger of some substantive evil which the State constitutionally may seek to prevent, has been settled." (Italic new.)

"This Court has not yet fixed the standard by which to determine when a danger shall be deemed clear; how remote the danger may be and yet be deemed present; and what degree of evil shall be deemed sufficiently substantial to justify resort to abridgement of speech."

"To justify suppression of free speech there must be reasonable ground to fear that serious evil will result if free speech is practiced. There must be reasonable ground to believe that the danger apprehended is imminent. There must be reasonable ground to believe that the evil to be prevented is a serious one."

The effort of the State of New York to prevent Unions, in general, from foisting unnecessary help upon business men who employ no one, should not be disturbed. As heretofore pointed out, the evil was a serious one and there existed reasonable ground to believe that this serious evil would result. There also was reasonable ground to believe that the danger thereof was substantial and imminent. In

asmuch as this Court has not fixed the standard by which to determine when the danger shall be deemed clear, or how remote the danger may be and yet be deemed present, and what degree of evil shall be deemed sufficiently substantial, this Court should be slow to disturb the public policy of the State of New York because, as was said by Mr. Justice HOLMES in *Otis v. Parker*, 187 U. S. 606, 609; "As it is often difficult to mark the line where what is called the police power of the States is limited by the Constitution of the United States, judges should be slow to read into the latter a *nolumus mutare* as against the law making power". It is only where the constitutional liberty of a resident has been interfered with beyond reasonable controversy that this Court may disturb the public policy of a State. In *Green v. Frazier*, 254 U. S. 233, 239, this Court said:

"we are not at liberty to interfere unless it is clear beyond reasonable controversy that rights secured by the Federal Constitution have been violated."

In the *Thornhill*, *Carlson* and *Schneider* cases the Court dealt with broad and unlimited statutes where it was clear beyond reasonable controversy that the constitutional rights of residents had been violated. In the case at bar, the injunction was specifically limited to a specific abuse and was not an absolute deprivation of the petitioners' constitutional rights. There existed a threat of serious evil to the State as well as a malicious and unjustifiable interference with the property rights of its residents. Under these circumstances, it cannot be said that the State Court acted improperly. In addition, this Court had held that in considering the regulation of freedom of speech "the State Court is primarily the judge of regulations required in the interest of public . . . welfare" and if it should be contended that immediate danger to the State is not real and substantial because the effect of the utter-

ance cannot be accurately foreseen, this Court said, "and the immediate danger is none the less real and substantial, because the effect of a given utterance cannot be accurately foreseen. The State cannot reasonably be required to measure the danger from every such utterance in the nice balance of a jeweler's scale." (*Gillow v. New York*, 268 U. S. 652, 667.)

In *Cantwell v. Connecticut*, 310 U. S. 296, 307-8, this Court, in dealing with freedom of religion as one of the liberties protected by the Fourteenth Amendment, said that the evidence failed to disclose any conduct on the part of the defendants which could be reasonably said to invite a breach of the peace and that the judgment was based "on a common law concept of the most general and undefined nature", the situation being "analogous to a conviction under a statute sweeping in a great variety of conduct under a general and undefined characterization, and leaving to the executive and judicial branches too wide a discretion in its application". In discussing the power of a State to limit the absolute exercise of such right, the Court continued:

"Decision as to the lawfulness of the conviction demands the weighing of two conflicting interests. The fundamental law declares the interest of the United States . . . that freedom to communicate information and opinion be not abridged. The State of Connecticut has an obvious interest in the preservation and protection of peace and good order within her borders. We must determine whether the alleged protection of the States' interest, means to which end would, in the absence of limitation by the Federal Constitution, lie wholly within the State's discretion, has been pressed, in this instance, to a point where it has come into fatal collision with the overriding interest protected by the federal compact.

"Violation of an act * * * narrowly drawn to prevent the supposed evil would pose a question differing from that we must here answer. *Such a declaration of the State's policy would weigh heavily in any challenge of the law as infringing constitutional limitations.* Here, however, the judgment is based on a common law concept of the most general and undefined nature." (Italics ours.)

The opinion concludes that "in the absence of a statute narrowly drawn to define and punish specific conduct as constituting a clear and present danger to a substantial interest of the State" the conviction of the defendant had to be set aside.

In *De Jonge v. State of Oregon*, 299 U. S. 353, 365, and *Near v. Minnesota*, 283 U. S. 697, 908, this Court reaffirmed the principle that freedom of speech and of the press are not absolute rights and must be exercised for a lawful purpose and that a State may deal with a specific abuse of such constitutional rights.

In weighing the substantiality of the reasons advanced herein in the light of the narrowly drawn and limited injunction granted, no violation of the petitioners' rights, such as condemned by the cases hereinabove referred to, has been made out. To deny to the State of New York power to protect the property rights and business of its residents and to prevent the wide-spread practice of an immediate and dangerous evil to a substantial portion of its residents and also to itself, would violate the long established inherent right of the State to take such action on behalf of itself and its citizens.

Among the many consequences which would result from the practice condemned by the State Court, we have mentioned the economic waste which is inimical to the interests of the State as well as the nation. This Court has taken judicial notice of this in its recent decision in *Phelps*

Dodge Corp. v. N. L. R. B., 313 U. S. 177, when it spoke of its concern for a "healthy policy of promoting production".

State Courts in the past have been permitted to limit picketing for specific abuses when in furtherance of unlawful purposes. Picketing has been held unlawful for the purposes of compelling an employer to commit a crime or to pay a stale wage claim (*Exchange v. Rifkin, supra*), to fix prices (*Standard v. Holz*, 200 App. Div. 758), to extort moneys, (*Dorchy v. Kansas, supra*), the commission of violence (*Milk Wagon Drivers v. Meadowmoor*), in violation of a contract agreeing to refrain from picketing and submitting disputes to arbitration (*Unceda Credit Clothing Stores v. Breskin*, 14 N. Y. S. 2d 964; *Shop 'N Save v. Retail Food Clerks Union*, California Superior Court, Los Angeles County, May 6th, 1940). In the administration of the National Labor Relations Act and the various State labor acts, freedom of expression on the part of employers for purposes which constitute violations of these acts has been prohibited by administrative agencies empowered to act by law as well as courts which have sustained such orders. In *N. L. R. B. v. Chicago Apparatus Company*, 116 Fed. 2d 753 (C. C. A. 7th), the Court said:

"Expressions of opinion concerning labor unions, by an employer, either written or merely spoken, may be of such a nature that their effect is to coerce and intimidate the employees, contrary to the provisions of the National Labor Relations Act. To hold that such expression, when employer manifestly intended to give them such an effect, are not violative of the Labor Act, would be to nullify the provisions of the Act and to thwart the public policy evidenced by said Act."

To the same effect see:

N. L. R. B. v. Virginia Electric and Power Company (October Term 1941, U. S. , decided Dec. 22, 1941).

Other States have found it necessary to take similar action to protect its residents and to ward off the serious evil threatened by such activity.

See:

Roraback v. Motion Pictures, 140 Minn. 481;

Hughes v. Motion Pictures, 282 Mo. 304.

In the *Roraback* case, the Court states one of its reasons for the prohibition of picketing where the sole question involved was whether an owner would be permitted to work in his own business. The Court said:

"Such a doctrine would limit the field of business to those who have sufficient capital to carry on a business without becoming operatives therein themselves, and would debar those who have little or no capital, except their personal skill and ability, from seeking to better their condition by engaging in business on their account. . . . It means that a man in any occupation, who starts in business for himself relying upon his personal skill and ability to attain success must forego the right to profit by his own skill at the arbitrary behest of another, or see his business ruined. Such is not the law. The right of every person to work in his own business is a fundamental right guaranteed to him by the bill of rights"

POINT IV.

The petitioners' appeal should be dismissed because the question urged in its petition for certiorari is not presented for review on this appeal.

This Court in the case of *Rorich v. Devan*, 307 U. S. 299, said that only the questions urged in the petition for certiorari and incidental to their determination will be considered on review. On page 8 of the petition for the writ

of certiorari under "Questions Presented" petitioners stated:

"(1) May a State Court absolutely enjoin admittedly peaceful and orderly picketing by a legitimate labor organization, merely because that picketing is not directed against an employer of members of the Union?"

(2) Assuming that the previous question must be answered in the negative, should an exception to the rule be established because in this case the Union was protesting against the peddler system rather than against the labor practices of a specific employer?

In the discussion of the reasons for the allowance of the writ sought by the petitioner, immediately following, we shall consider in detail the foregoing questions."

The question presented in the petition was whether picketing could be prohibited where a Union "was protesting against the peddler system." Undoubtedly, the question was presented with the idea of conveying to this Court the impression that the New York State Court had absolutely enjoined the petitioners herein from following a course of conduct protesting against the peddler system similar to the peaceful picketing of Unions in the *Meadowmoor* and *Lake Valley Farm Products* cases recently decided by this Court.

However, petitioners' brief reveals that the primary and specific object of its picketing was directed solely against two individuals, the respondents herein, for the "specific object . . . to induce the respondents, who worked seven days each week without respite, to hire members of the Union as relief drivers for one day of the week." The petitioners' brief admits that no general course of picketing or publicity against the peddler system was resorted

to in this case similar to that of the *Meadowmoor* and *Lake Valley* cases. Whereas, in those cases the specific object of the Unions was to expose, eradicate and destroy the peddler system by a trade wide campaign of picketing against numerous manufacturers and retailers, the specific object of the petitioners herein was an attempt to foist unnecessary employees upon the respondents. As this is the specific and sole question to be determined upon this appeal and it is one totally different from the question presented in the petition for certiorari, it is submitted that the appeal be dismissed.

POINT V.

Refutation of arguments and cases cited in the petitioners' brief.

The petitioners' brief states on page 4 that the respondents conceded that there was no fraud practiced by the Union and rely therefor upon the respondents' concession that there was no misrepresentation. No concession, regarding fraud was ever made. Although the placard used by the Union truthfully stated a fact, it referred to the respondents as "a bakery route driver," which together with oral statements that non-union drivers were delivering merchandise to retail stores could reasonably give a person the impression that the respondents were not owners but merely non-union employees. This might be considered a species of fraud.

In discussing their conduct with respect to manufacturers and retailers, petitioners merely state that they "requested" these persons "not to deal" with the respondents. The uncontradicted testimony proves that requests were not made, but threats of picketing were

resorted to. It is important to note that we are concerned not only with the question of picketing of respondents but also picketing of manufacturers as well as threats to picket retail stores. Modern industry is so well organized today that where a picket line appears in front of a retail store, it is common knowledge that the employees of such stores usually are affected because of an almost universal rule that members of a Union will not cross the picket line of another. The continuance of a picket line in front of a retail store may cause employees in the retail stores to cease working because of their adherence to the rule not to cross a picket line. Thus, retailers might cease dealing with the respondents, not because of the language on the placard, but due to pressure other than that of free speech whereby the very life of their businesses would be threatened. The same is true of the manufacturers and the determination of this case should consider this as an important factor.

On page 5 of petitioners' brief it is stated "there is no factual justification for branding peaceful opposition to the peddler system as an 'illegal objective' and prohibiting the exercise of the privilege of free speech by opponents of that system." No such question appears in this case. Concededly, the Court of Appeals has not prohibited the petitioners herein from conducting peaceful picketing in opposition to the peddler system. The prohibition merely applies to conduct on the part of the petitioners directed against activity to foist unnecessary help upon the respondents. General conditions in the trade which were incorporated into the findings do not in any way negative the determination of the primary objective of this Union.

On page 6 reference is again made to the fact that if the Union is throttled when it seeks to raise its voice in opposition to the peddler system the number of peddlers will constantly increase as manufacturers take advantage of a cheaper method of distribution. This is not true as the petitioners are at liberty today, and have been at all times, "to raise its voice in opposition to the peddler system." The injunction in no wise has restricted any activity in this respect. The sole prohibition is that the Union may not picket the two respondents herein for the sole purpose of compelling them to hire unnecessary employees. All other activity other than this is not enjoined and the constant repetition of the peddler system evil and general condition which may apply to many peddlers will not justify or permit the imposition of illegal demands.

The reference to findings on page 7 are not connected up or deal with the respondents herein. The fact is that the Trial Court specifically refused to find that the intent and motive of the petitioners was to protest against the evils of the peddler system, but on the contrary found that their sole purpose was, in effect, to extort moneys from helpless peddlers.

Although admittedly the sole issue in this case is whether a State may prohibit picketing by a narrowly drawn injunction to prevent a Union from attempting to force the respondents herein to hire unnecessary help, the petitioners in the "Specifications of Errors to be Urged" twist and distort the real issue by attempting to fit the problem into some language used in the *Swing* case, which as will be hereinafter shown, is not in point. The statement is made that the Court of Appeals "erred in holding that an abso-

lute injunction against peaceful and orderly picketing could properly issue merely because no employment relationship existed between the members of the defendant Union and the peddlers". There is no basis for such statement. The New York Court of Appeals did not hold this to be the law. In fact, its affirmance of the Trial Court decision was clearly explained in the later case of *Opera-on-Tour v. Weber*. The reason for its affirmance was not because no employment relationship existed, but because the petitioners sought to coerce the respondents to hire a man one day per week. The New York Court of Appeals has not restrained picketing in other cases where no employment relationship existed between the persons picketing an establishment and an employer. In *Goldfinger v. Feintuch, supra*, the Court of Appeals recently permitted a Union to picket the establishment of a proprietor who worked alone without help where the Union was protesting against the sale of a non-union product. That Court permitted picketing as it found the purpose to be a lawful one. In another case, that of *Baillis v. Fuchs*, (1940) 283 N. Y. 130, the Court of Appeals of New York permitted picketing although four brothers as partners desired to conduct a business alone without help as it found under the circumstances that although the employment relationship had been completely severed by employees who went out on strike, it would not permit employers to take advantage of the doctrine enunciated in *Thompson v. Bockhout, supra*, in order to avoid the consequences of collective bargaining. The petitioners rely strongly upon the *Swing* case and state that there is no sound reason to distinguish the case at bar from that case. The important distinction is that in the *Swing* case the employer employed a number of employees who were not members of a Union. The defendant Union which was enjoined, had commenced picketing in order to unionize that employer and to force the employer to hire Union labor in the place of non-union workers. The lawfulness of such objective has been so

universally recognized that it was indeed surprising that the Supreme Court of Illinois adopted so narrow and out-moded a viewpoint. Permitting picketing for the purpose of substituting Union labor in the place of non-union labor has been recognized as a legitimate objective of labor for many many years by the Court of Appeals of New York. (See, *National Protective Association v. Cummings*, 170 N. Y. 315; *Exchange v. Rifkin*, *supra*.) In fact, in a very recent case the New York Court of Appeals followed its long line of decisions where the facts were identical to those in the *Swing* case. In *May's Furs and Ready to Wear v. Bauer*, (1940) 282 N. Y. 331, strangers who had never been employees of the plaintiff in that action picketed in order to obtain employment. Despite the fact that no employment relationship had ever existed between those picketing and the employer, the Court of Appeals reversed the Appellate Division, Second Department, and sustained the right of such persons to peacefully appeal to the public on the picket line. However, in that case, as well as the *Swing* case, the purpose sought to be accomplished by means of picketing was a lawful one, to wit, to obtain employment for members of the Union in place of workers who were non-members. In the case at bar the important distinction is that the respondents had no employees, Union or non-union, and were working alone in their own business. Here, the petitioners were not, as in the *Swing* case, seeking to obtain employment being performed by non-union workers, but they were attempting to create unnecessary employment by compelling the respondents to abstain from working in their own business. Their conduct was tantamount to extortion and had no legitimate reasonable relation to the customary activities allowed to labor Unions within the permissible area of action.

The petitioners take the position that the language of the Court of Appeals in the *Opera-on-Tour* case where the words "coerce a peddler" are used, dooms the decision

in the case at bar because the Court of Appeals has thus branded peaceful picketing as coercion. The fallacy of that argument is that the word "coerce" was used not in the sense that picketing to obliterate or remove the peddler system was coercion, or that picketing for such purpose was unlawful. That point was not at issue. The sole question was whether picketing could be used to compel these respondents to hire unnecessary help and the word "coerce" was used in the sense that peaceful means to accomplish an unlawful purpose is coercion. The Court of Appeals has never said that peaceful picketing protesting against a peddler system is illegal, despite petitioners' remarks to that effect.

Petitioners refer to the dissenting opinion of Chief Justice LEHMAN in the *Opera-on-Tour* case in an endeavor to prove that the State Court was without power to decide that the objective in this case was an unlawful one. It is significant to note that Justice LEHMAN concurred in the unanimous affirmance of this case. Borrowing language which was written because of the peculiar set of facts involved in that particular case having no application to the facts of the case at bar, is inconclusive. Furthermore, no question of picketing was involved in that case. The power of State Courts to settle written and unwritten law is well established. (See Point II.) The best answer to that contention appears in the *Meadowmoor* case where Justice FRANKFURTER said:

"just as a state through its legislature may deal with specific circumstances menacing the peace by an appropriately drawn act, *Thornhill v. Alabama, supra*, so the law of a state may be fitted to a concrete situation through the authority given by the state to its courts."

In fact, Justice LEHMAN in his dissenting opinion in *Busch Jewelry Co. v. United Retail Employees Union*, 281

N. Y. 150, in reaffirming the principle of law laid down in *Exchange v. Riskin*, *supra*, said:

"The right to picket peacefully for a lawful end was not created by statute and no statute, I agree, could take away from the Supreme Court its jurisdiction to grant in proper case needed protection against unlawful abuse of the right to picket."

The cases cited by the petitioners are all not in point. All cases other than the *Swing*, *Meadowmoor* and *Lake Valley* cases dealt with broad and general statutes or injunctions with undefined threats to the inherent constitutional rights of individuals. In fact, all those cases, many of which have been discussed in this brief, noted exceptions to the general rules laid down in circumstances which jibe with the narrowly drawn limited injunction in this case.

Not having heretofore discussed the case of *Herndon v. Lowry*, 301 U. S. 242, it is significant to note that the Court in that case said that the State relied upon a statute unlike one which "denounced certain acts carefully and adequately described".

The statement is made that the activity in the case at bar was "similar to the activity of the Union involved" in the *Meadowmoor* and *Lake Valley Farm Products* cases. An examination of these opinions reveals that the factual set up was entirely different. There picketing was sincerely and honestly commenced for the purpose of eradicating the peddler system from the entire industry. No attempt was made to obtain unnecessary employment from individual peddlers. Any attempt to liken the activities of the petitioners in the case at bar to that of the Union in those cases, is not well taken as the evidence here unequivocally shows that the sole purpose of the picketing was to foist unnecessary help upon these employers and that the peddler system was being relied upon in defense

of the action as a pretext to escape punishment for misconduct.

In conclusion, it is advisable to point out that the respondents herein have proceeded on the theories that the injunction should be sustained on either of two theories.

(1) That the State has a right to protect the property of its residents from unjustifiable interference.

(2) That the activity prohibited was such that it was a serious and immediate evil dangerous to the best interests of the State.

Although, because of the grave problem involved herein, respondents have justified the conduct of the State Court on both of these grounds, it is submitted that it was not incumbent upon the respondents to make out so strong a case as to be able to come within the rule laid down in *Whitney v. California*, 274 U. S. 357. It must be remembered in that case Justice BRANDEIS expressed in greater detail the rule first stated in *Schenck v. United States*, 249 U. S. 247, and that the rule was founded upon restrictions of free speech emanating from interpretations of broad and unlimited statutes of the nature condemned in the *Thornhill* and *Carlson* cases. This rule of law was intended only to apply to cases of that kind and were never intended to apply to matters which the State Court could determine by individual litigation. In fact, this Court in *Gillow v. New York*, *supra*, in referring to this rule which was first laid down in the *Schenck* case, said:

"And the general statement in the *Schenck Case* (p. 52) that the 'question in every case is whether the words are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils'—upon which ~~great~~ reliance is placed in the defendants' argument—was manifestly intended, as shown by the context, to apply only in cases of this class."

However, although this case involves individuals and an injunction narrowly drawn to cure a specific evil, the serious social and economic consequences of the conduct prohibited is such that the respondents feel that the facts of their case also come clearly within the rules of the *Whitney* case.

A refusal to sustain the wise action of the State Court will permit well organized groups to feast upon disorganized, weak and helpless individuals with the State helplessly watching its multitudes of small businessmen being drained of their small capital and income and destroyed.

CONCLUSION.

The judgment of the Court of Appeals of the State of New York should be affirmed and the appeal dismissed.

Respectfully submitted,

HYMAN WOHL,
LOUIS PLATZMAN,
Respondents in Person.

On the Brief:

JOSEPH APFEL,
ARTHUR STEINBERG.

SUPREME COURT OF THE UNITED STATES.

No. 901.—OCTOBER TERM, 1940.

Bakery and Pastry Drivers and Help-
ers Local 802 of the International
Brotherhood of Teamsters, et al., Pe-
titioners,

vs.

Hyman Wohl and Louis Platzman.

On Writ of Certiorari to
the Court of Appeals of
the State of New York.

[March 30, 1942.]

Mr. Justice JACKSON delivered the opinion of the Court.

The petitioners are a labor union and certain of its officers. The union membership consists of truck drivers occupied in the distribution of baked goods. The respondents Wohl and Platzman are, and for some years have been, peddlers of baked goods. They buy from bakeries and sell and deliver to small retailers, and keep the difference between cost and selling price, which in the case of Wohl is approximately thirty-two dollars a week, and in the case of Platzman, about thirty-five dollars a week. Out of this each must absorb credit losses and maintain a delivery truck which he owns—but has registered in the name of his wife. Both are men of family. Neither has any employee or assistant. Both work seven days a week, Wohl putting in something over thirty-three hours a week, and Platzman about sixty-five hours a week. It was found that neither has any contract with the bakeries from whom he buys, and it does not appear that either had a contract with any customer.

The conflict between the union and these peddlers grows out of certain background facts found by the trial court and summarized here. The union has for some years been engaged in obtaining collective bargaining agreements prescribing the wages, hours, and working conditions of bakery drivers. Five years before the trial there were in New York City comparatively few peddlers or so-called independent jobbers—fifty at most, consisting largely of men who had a long-established retail trade. About four years before

2 Bakery and Pastry Drivers and Helpers, etc. vs. Wohl et al.

the trial the social security and unemployment compensation laws, both of which imposed taxes on payrolls, became effective in the State of New York. Thereafter the number of peddlers of bakery products increased from year to year until at the time of hearing they numbered more than five hundred. In the eighteen months preceding the hearings, baking companies which operated routes through employed drivers had notified the union that at the expiration of their contracts they would no longer employ drivers but would permit the drivers to purchase trucks for nominal amounts, in some instances fifty dollars, and thereupon to continue to distribute their baked goods as peddlers. Within such period a hundred and fifty drivers who were members of the union and had previously worked under union contracts and conditions were discharged and required to leave the industry unless they undertook to act as peddlers.

The peddler system has serious disadvantages, to the peddler himself. The court has found that he is not covered by workmen's compensation insurance, unemployment insurance, or by the social security system of the State and Nation. His truck is usually uninsured against public liability and property damage, and hence commonly carried in the name of his wife or other nominee. If injured while working, he usually becomes a public charge, and his family must be supported by charity or public relief.

The union became alarmed at the aggressive inroads of this kind of competition upon the employment and living standards of its members. The trial court found that if employers with union contracts are forced to adopt the "peddler" system, "the wages, hours, working conditions, six-day week, etc., attained by the union after long years of struggle will be destroyed and lost." In the spring of 1938 the union made an effort in good faith to persuade the peddlers to become members, and those who desired were admitted to membership and were only required to abide by the same constitution, by-laws, rules and regulations as were all other members. That, however, included a requirement that no union member should work more than six days per week.

These particular peddlers were asked to join the union, and each signed an application, but neither joined. The union then determined to seek an understanding with peddlers who failed to join the union that they work only six days a week and employ an unemployed union member one day in a week. The union did not in-

sist that the relief man be paid beyond the time that he actually worked, but asked that he be paid on the basis of the union's daily wage, which fixed a scale for part of a day if but part of a day was required for the service of the route. For some ten weeks Wohl employed a relief driver, who was paid \$6.00 per day, the normal day's wage for a full day being \$9.00.

When Wohl and Platzman finally refused either to join the union or to employ a union relief man, and continued to work seven days each week, the union took the measures which led to this litigation. On the twenty-third of January, 1939, the union caused two pickets to walk in the vicinity of the bakery which sold products to Wohl and Platzman, each picket carrying a placard, one bearing the name of Wohl and the other that of Platzman, and under each name appeared the following statement: "A bakery route driver works seven days a week. We ask employment for a union relief man for one day. Help us spread employment and maintain a union wage, hours and conditions. Bakery and Pastry Drivers and Helpers Local 802, I. B. of T. Affiliated with A. F. L." The picketing on that day lasted less than two hours. Again, on the twenty-fifth of January, the union caused two pickets to display the same placards in the same vicinity for less than an hour; and on the same day a picket with a placard bearing the name of Wohl over the same statement, picketed for a very short time in the vicinity of another bakery from which Wohl had purchased baked products. It was also found that a member of the union followed Platzman as he was distributing his products and called on two or three of his customers, advising them that the union was seeking to persuade Platzman to work but six days per week and employ a union driver as a relief man, and stating to one that in the event he continued to purchase from Platzman a picket would be placed in the vicinity on the following day with a placard reading as set forth above. It does not appear that this threat was carried out.

The trial court found that the placards were truthful and accurate in all respects; that the picketing consisted of no more than two pickets at any one time and was done in a peaceful and orderly manner, without violence or threat thereof; that it created no disorder; that it was not proved that any customers turned away from such bakeries by reason of the picketing; and it was not established that the respondents sustained any monetary loss by reason thereof.

4 *Bakery and Pastry Drivers and Helpers, etc. vs. Wohl et al.*

The trial court issued injunctions which restrained the union and its officers and agents from picketing either the places of business of manufacturing bakers who sell to the respondents or the places of business of their customers. 14 N. Y. Supp. 2d 198. The judgment was affirmed without opinion by the Appellate Division of the First Department, two Justices thereof dissenting with opinion, 259 A. D. 868; and was affirmed without opinion by the Court of Appeals, 284 N. Y. 788. This Court denied a petition for a writ of certiorari because it did not appear that the federal question presented by the petition had necessarily been decided by the Court of Appeals. 313 U. S. 572. The Court of Appeals later certified that such question had been passed upon, a petition for rehearing was granted, the writ of certiorari granted, and the judgment summarily reversed. 313 U. S. 548. We later granted another petition for rehearing, and have since heard argument. 314 U. S. —.

The controversy in the trial court centered about the issue as to whether a labor dispute was involved within the meaning of New York statutes. The trial court found itself constrained to hold that no labor dispute was involved and seemed to be of the impression that therefore no Constitutional rights were involved. It concluded as a matter of law that the respondents "are the sole persons required to run their business and therefore they are not subject to picketing by a union or by the defendants who seek to compel them to employ union labor." The trial court refused the petitioners' request for a finding that "it was lawful for the defendants to truthfully advise the public of its cause, whether in the vicinity of the places of business of bakers who sold to the plaintiffs, or otherwise." Likewise, it refused a request to find "that it was a constitutional right of the defendants to advise the public accurately and truthfully and without violence or breach of the peace, that defendants worked seven days a week and that the defendants were seeking to secure employment from the plaintiffs for unemployed members of the union one day a week."

So far as we can ascertain from the opinions delivered by the state courts in this case, those courts were concerned only with the question whether there was involved a labor dispute within the meaning of the New York statutes and assumed that the legality of the injunction followed from a determination that such a dispute was not involved. Of course that does not follow: one need not be in a "labor dispute" as defined by state law to have a right under

the Fourteenth Amendment to express a grievance in a labor matter by publication unattended by violence, coercion, or conduct otherwise unlawful or oppressive.

The respondents say that the basis of the decision below was revealed in a subsequent opinion of the Court of Appeals, where it was said with regard to the present case that "we held that it was an unlawful labor objective to attempt to coerce a peddler employing no employees in his business and making approximately thirty-two dollars a week, to hire an employee at nine dollars a day for one day a week." *Opera-on-Tour v. Weber*, 285 N. Y. 348, 357, certiorari denied, 314 U. S. —. But this lacks the deliberateness and formality of a certification,¹ and was uttered in a case where the question of the existence of a right to free speech under the Fourteenth Amendment was neither raised nor considered.

We ourselves can perceive no substantive evil of such magnitude as to mark a limit to the right of free speech which the petitioners sought to exercise. The record in this case does not contain the slightest suggestion of embarrassment in the task of governance; there are no findings and no circumstances from which we can draw the inference that the publication was attended or likely to be attended by violence, force or coercion, or conduct otherwise unlawful or oppressive; and it is not indicated that there was an actual or threatened abuse of the right to free speech through the use of excessive picketing. A state is not required to tolerate in all places and all circumstances even peaceful picketing by an individual. But so far as we can tell, respondents' mobility and their insulation from the public as middlemen made it practically impossible for petitioners to make known their legitimate grievances to the public whose patronage was sustaining the peddler system except by the means here employed and contemplated; and those means are such as to have slight, if any, repercussions upon the interests of strangers to the issue.

The decision of the Court of Appeals must accordingly be

Reversed.

Mr. Justice ROBERTS took no part in the consideration or decision of this case.

¹ Compare *Ex parte Texas*, 314 U. S. —.

SUPREME COURT OF THE UNITED STATES.

No. 901.—OCTOBER TERM, 1940.

Bakery and Pastry Drivers and Helpers Local 802 of the International Brother- hood of Teamsters, et al., Petitioners, vs. Hyman Wohl and Louis Platzman.	} On Writ of Certiorari to the Court of Ap- peals of the State of New York.
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[March 30, 1942.]

Mr. Justice DOUGLAS, concurring.

If the opinion in this case means that a State can prohibit picketing when it is effective but may not prohibit it when it is ineffective, then I think we have made a basic departure from *Thornhill v. Alabama*, 310 U. S. 88. We held in that case that "the dissemination of information concerning the facts of a labor dispute must be regarded as within that area of free discussion that is guaranteed by the Constitution." p. 102. While we recognized that picketing could be regulated, we stated (p. 104-105): "Abridgment of the liberty of such discussion can be justified only where the clear danger of substantive evils arises under circumstances affording no opportunity to test the merits of ideas by competition for acceptance in the market of public opinion." And we added (p. 105): "But no clear and present danger of destruction of life or property, or invasion of the right of privacy, or breach of the peace can be thought to be inherent in the activities of every person who approaches the premises of an employer and publicizes the facts of a labor dispute involving the latter." For that reason we invoked the test, employed in comparable situations (*Cantwell v. Connecticut*, 310 U. S. 296, 307; *Bridges v. California*, 314 U. S. —) that the statute which is the source of the restriction on free speech must be "narrowly drawn to cover the precise situation giving rise to the danger." p. 105.

We recognized that picketing might have a coercive effect: "It may be that effective exercise of the means of advancing public

2 *Bakery and Pastry Drivers and Helpers, etc. vs. Wohl et al.*

knowledge may persuade some of those reached to refrain from entering into advantageous relations with the business establishment which is the scene of the dispute. Every expression of opinion on matters that are important has the potentiality of inducing action in the interests of one rather than another group in society." p. 104.

Picketing by an organized group is more than free speech, since it involves patrol of a particular locality and since the very presence of a picket line may induce action of one kind or another, quite irrespective of the nature of the ideas which are being disseminated. Hence those aspects of picketing make it the subject of restrictive regulation.

But since "dissemination of information concerning the facts of a labor dispute" is constitutionally protected, a State is not free to define "labor dispute" so narrowly as to accomplish indirectly what it may not accomplish directly. That seems to me to be what New York has done here. Its statute (Civil Practice Act, § 876a) as construed and applied in effect eliminates communication of ideas through peaceful picketing in connection with a labor controversy arising out of the business of a certain class of retail bakers. But the statute is not a regulation of picketing *per se*—narrowly drawn, of general application, and regulating the use of the streets by all picketeers. In substance it merely sets apart a particular enterprise and frees it from all picketing. If the principles of the *Thornhill* case are to survive, I do not see how New York can be allowed to draw that line.

Mr. Justice BLACK and Mr. Justice MURPHY join in this opinion.